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THURGOOD MARSHALL: A Teacher's Guide

Prepared by

Isela Peña

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Thurgood Marshall in the Standards

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Texas §113.4.b.4.A (Social Studies, Grade 2)

History: The student understands how historical figures and ordinary people helped to shape our community, state, and nation. The student is expected to: *identify contributions* of historical figures such as Henrietta King and **Thurgood Marshall** who have influenced the community, state, and nation.

Note: Although Thurgood Marshall is only mentioned specifically once in the Texas Standards, the civil rights movement and themes revolving this era are found throughout the elementary, middle, and high school standards. The national standards also require students learn about the struggle of both racial and gender equality and the overall extension of civil liberties. The life, career, and legacy of Marshall can be incorporated in different ways to discuss civil rights themes and notions of equality, meeting the requirements of both Texas and national standards.

Biographical Summary

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In the history of the United States, Thurgood Marshall is known for his involvement in the civil rights movement and for serving as the first African American justice on the United States Supreme Court. However, in order to understand the drive behind Marshall's work, it is necessary to explore his own personal history and that of his family, which helped cultivate him into the historical figure we know him as today.

Born on July 2, 1908, in Baltimore, Maryland, he was named Thoroughgood Marshall, after his paternal grandfather, a former slave. According to Marshall, after growing tired of spelling his long first name, he shortened it to Thurgood by the time he was in the second grade. His parents, William Canfield and Norma A. Marshall, were mulattoes and could trace their ancestry "to a nineteenth-century Congolese slave who caused so much trouble for his master that he was set free."¹ This was Marshall's paternal grandfather. Marshall's father was a Pullman Car waiter and amateur writer. His mother, upon entering Morgan College in 1921, became an elementary schoolteacher. Marshall also had one older brother, Aubrey Marshall, Jr., who would attend medical school and become an eminent surgeon. Marshall recalled his youth as follows: "We lived on a respectable street, but behind us there were back alleys where the roughnecks and the tough kids hung out. When it was time for dinner, my mother used to go to the front door and call my brother. Then she'd go to the back door and call me."²

Marshall started school at age six; he attended Number 103, a school considered to be the "best colored elementary school in Baltimore."³ While in school, he enjoyed teasing the girls and was remembered as always sitting in the front row so that his teachers could watch him closely. In 1921, he entered his freshman year at Baltimore's Colored High and Training School, an all black high school "that had no school library, no cafeteria, and no gym when [Marshall] arrived."⁴ "Colored High," as it was commonly known in those times, was so overcrowded that half-day sessions were held to accommodate the entire student body. The students were additionally divided into different classes based on their performance on tests given to the all 9th graders that first day of class. Marshall placed into a class with the best students.

Marshall continued to be known as a prankster in high school and his "antics occasionally led to punishment," often in the form of being sent to the school's basement with a copy of the U.S. Constitution to memorize.⁵ Of this experience, Marshall later said, "[b]efore I left school, I knew the whole thing by heart."⁶ While in high school, Marshall's nickname was "Legs," due in part to his "lanky walk" and the "way he swung his long arms and longer legs."⁷ These characteristics, along with his wavy hair and light skin color made him popular with the

¹ Roger Goldman and David Gallen, *Thurgood Marshall Justice for All* (New York: Carroll & Graf Publishers, Inc., 1992) 22.

² Goldman and Gallen, *Justice for All*, 24.

³ Juan Williams, "The Higher Education of Thurgood Marshall," *The Journal of Blacks in Higher Education*, 22 (Winter 1998-1999): 82.

⁴ Williams, "Higher Education of Thurgood Marshall," 82.

⁵ Williams, "Higher Education of Thurgood Marshall," 82.

⁶ Williams, "Higher Education of Thurgood Marshall," 82.

⁷ Williams, "Higher Education of Thurgood Marshall," 83.

girls. Although he was not an athlete, Marshall's participation and success on the debate team made him well-known on the high school campus. Marshall maintained a B average during his high school career while taking classes including "Latin, history, trigonometry, and physics, as well as machine work and wood trimming."⁸ In 1924 Marshall graduated in the top third of his class.

In 1925, Marshall entered Lincoln University, in Pennsylvania. Lincoln University, named after Abraham Lincoln, was known as the "Black Princeton" because it was founded and run by the same Presbyterians who ran Princeton University. The University used the same colors as Princeton and majority of its white staff were Princeton graduates. While at Lincoln, Marshall's friends "thought he never studied and he became known as a great pinochle player, a fan of cowboy movies, and a connoisseur of comic books."⁹ One friend even described him as a "harum-scarum youth, the loudest individual in the dormitory and apparently the least likely to succeed."¹⁰ During his second year, Marshall joined Alpha Phi Alpha, "an elite fraternity of mostly light-skinned boys."¹¹ He enjoyed hazing the younger students and did so in such an aggressive manner that he got kicked out of school, along with 25 other sophomores. The students were readmitted only after they wrote and signed a confession admitting to their behavior. Interestingly, it was his fellow classmate, Langston Hughes who would come up with this idea. Hughes would later describe Marshall as "rough and ready, loud and wrong, good natured and uncouth."¹²

At 21 years of age, Marshall met Vivian "Buster" Burey, a freshman at the University of Pennsylvania at an ice-cream parlor. On September 4, 1929, they married in Philadelphia at the First African Baptist Church. Now married, Marshall returned to school with a renewed focus on his studies. In 1930, he graduated with honors and was determined to go to law school, spending the months that followed working as a waiter to earn tuition money. However, as the fall of 1930 neared, he did not make enough money to pay the enrollment fees. Committed to his education, his mother pawned her engagement and wedding rings to raise the money to ensure Marshall's enrollment at the law school would not be delayed.

Marshall initially had his sights on attending the University of Maryland Law School, but as he soon found out, only two black students had ever graduated from the law school, and since the 1890s, no black student had been admitted. This made Marshall determined to get admitted or find a way to get even and get even, he did. In 1935, Marshall won his first desegregation lawsuit against the law school, allowing Donald Murray, an African-American to be admitted to the law school. At that time, Marshall's only option was to attend Howard University Law School in Washington D.C., which had inexpensive tuition and taught law to African-American students. However, Marshall was aware that the law school did not have a good academic reputation, but rather was known as the "dummy's retreat, because the only people that went there were those who couldn't get in any other school."¹³ Nevertheless determined to succeed, Marshall began his first day at the law school with 35 other young black

⁸ Williams, "Higher Education of Thurgood Marshall," 83.

⁹ Williams, "Higher Education of Thurgood Marshall," 84.

¹⁰ Williams, "Higher Education of Thurgood Marshall," 84.

¹¹ Williams, "Higher Education of Thurgood Marshall," 85.

¹² Williams, "Higher Education of Thurgood Marshall," 84.

¹³ Williams, "Higher Education of Thurgood Marshall," 87.

men. Unbeknownst to Marshall, things at Howard would prove to be different the year he enrolled.

For the first time, the school was going to be a full-time law school that offered daytime courses only. The faculty of the law school was made up of eleven individuals, with Charles Hamilton Houston, serving as dean of the school. Houston's goal was to make Howard a fully accredited law school and a "West Point of Negro leadership," of which Marshall became a member of the first class of students to mark this transformation.¹⁴ Of his days in law school, Marshall stated, "I'd got the horsin' around out of my system and I heard law books were to dig in so I dug deep."¹⁵ His determination to succeed and hard work paid off. He became a top student in his first year, allowing him to become the student assistant at the law library and more importantly, enabling him to begin developing a close relationship with Houston. Houston would become Marshall's mentor, good friend, and legal partner in the litigation pursued by the National Association for the Advancement of Colored People (NAACP). In 1933, Marshall graduated from the law school first in a class of six men.

In the fall of 1933, in the midst of the Great Depression, Marshall began his legal career in Baltimore where he opened up his own practice. At the time, the unemployment rate was over 20%, making it difficult for Marshall's clients to pay the legal fees. Marshall had little work during these times, opening his schedule to tour the south with Houston on school segregation fact-finding trips for the NAACP. During this time, Marshall and Buster lived in a five bedroom, one bathroom home with his parents, Aubrey and Aubrey's family. It was also during this time that Buster suffered several miscarriages. Despite the living conditions and their failing attempts at having children, Marshall and Buster were reportedly happy. Within less than a year, he joined the Baltimore Branch of the NAACP, where he worked alongside Houston. He eventually went to work for the NAACP's national office located in New York City.

While living in New York City, Marshall's reputation as a party-going, drinking man grew. He enjoyed the company of women and it was known by Buster and others that he was sleeping with women all around the country. Besides his sexual encounters, Marshall also enjoyed the New York party scene. Marshall's social life caused strain in his relationship with Buster. In 1954, as Marshall and his NAACP colleagues celebrated the *Brown* victory, Buster was nowhere to be found. Just before Thanksgiving that same year, she told Marshall she had lung cancer. Buster's decision not to tell Marshall of her cancer until the disease was so advanced that she had no choice but to tell him was evidence of how strained the relationship had become. Buster died four months later on February 11, 1955. Her death sent Marshall into a deep depression that worsened as he fought with her family over funeral arrangements and the distribution of her personal belongings. That same year, on December 17, 1955, Marshall married Cecelia (Cissy) Suyat, a NAACP secretary of Filipino descent, whom he had grown close to even before Buster's death. Eight months after their wedding, she gave birth to Marshall's first son, Thurgood Marshall, Jr. In July 1958, they welcomed their second son, John Marshall. Marshall thrived in this new role as a family man.

Although an incredibly talented attorney, a review of Marshall's trial record would suggest otherwise. However, it is important to note that in times Marshall was a trial attorney,

¹⁴ Williams, "Higher Education of Thurgood Marshall," 87.

¹⁵ Williams, "Higher Education of Thurgood Marshall," 87.

whether trying criminal or civil cases, he was “[facing] judges and juries who were typically quite hostile to his clients’ claims.”¹⁶ At this time, winning a criminal case was not about proving innocence, but rather more about avoiding the death penalty and being given a life sentence instead. Marshall displayed great skill at examining witnesses on the stand. His role with the NAACP would eventually shift from trial work to conducting appellate work and delivering numerous oral arguments before the Supreme Court.

Marshall’s oral arguments before the Court were non-traditional. He often spoke in plain language, using a conversational style, and making disjointed arguments because he was “able to capture the essence of his position in a phrase or two that established the common sense morality of his cause, but he did not hammer at that point.”¹⁷ Moreover, “[w]hen presenting the most far-reaching claims, Marshall's manner suggested that he and the Justices ought to talk about the problems the Justices might have, so that he and they could work them out as sensible people should.”¹⁸

As a lawyer, Marshall argued 32 cases before the Supreme Court, winning a total of 29. Fourteen of these cases he argued as an attorney with the NAACP and eighteen as the United States Solicitor General. The breadth of cases he litigated before the Supreme Court “included landmark cases establishing the right to equal access to public education, public accommodations and housing, voting rights, and civil rights.”¹⁹ Interestingly, [a]t the time of his nomination, only six other people had argued as many cases before the Supreme Court.”²⁰ While Marshall argued a number of notable legal cases, it was *Brown v. Board of Education*, decided in 1954 that he is most remembered for. In *Brown*, the Supreme Court ruled that racial discrimination in public education is unconstitutional, doing away with the separate-but-equal doctrine established over 50 years before *Plessy v. Ferguson*.²¹

In 1961, Marshall was appointed to the Court of Appeals for the Second Circuit by President John F. Kennedy. He became the first African-American to serve on this court. During his tenure on the court of appeals, he impressively authored impressively 98 opinions, none of which were overturned. Just three years later, in 1964, President Johnson appointed Marshall to the position of Solicitor General. At the time, President Johnson indicated to Marshall that the appointment had nothing to do with an appointment to the Supreme Court, stating, “I want that distinctly understood – there’s no quid pro quo here at all. You do your job. If you don’t do it, you go out. If you do it, you stay here. And that’s all there is to it.”²² In resigning from the bench, Marshall took a \$4,500 pay cut. Years later after nominating him to the Supreme Court, President Johnson would admit that he had intentions to appoint Marshall to the Supreme Court at the time he asked him to serve as solicitor general, indicating that he wanted

¹⁶ Mark Tushnet, “Lawyer Thurgood Marshall,” *Stanford Law Review* 44 (1992): 1277.

¹⁷ Tushnet, “Lawyer Thurgood Marshall,” 1285.

¹⁸ Tushnet, “Lawyer Thurgood Marshall,” 1285.

¹⁹ Janet Cooper, “TM,” *Stanford Law Review* 44 (1992): 1232.

²⁰ Cooper, “TM,” 1232.

²¹ *Plessy v. Ferguson*, 163 U.S. 537, 544 (1896)

²² Williams, “Higher Education of Thurgood Marshall,” 87.

him in the position to “prove to everyone, including the President, what he could do.”²³ Marshall was confirmed as Solicitor General on August 11, 1965. He would describe this position as “the best job in the world.”²⁴

In 1967, Justice Tom C. Clark announced his retirement from the Court and within 24 hours, Marshall was nominated to the U.S. Supreme Court by President Johnson. Announcing his nomination, President Johnson stated, “[h]e is the best qualified by training and by very valuable service to the country. I believe it is the right thing to do, the right time to do it, the right man and the right place.”²⁵ While the public reaction to the nomination was overall favorable and the Senate initially indicated that Marshall would be confirmed with little trouble, the Judiciary Committee hearing turned out to be difficult. Leading the opposition, Southern Democratic Senators attacked Marshall’s “liberal judicial philosophy and, at times, his legal knowledge,” his record on the appellate bench, claiming that it reflected judicial activism and questioned his “knowledge of technical details related to the origins of constitutional law and nineteenth-century political figures.”²⁶

Marshall was confirmed on October 2, 1967 and would go on to serve on the Court until 1991. For Marshall, the appointment to the Supreme Court was something he took incredibly serious and a position which he stated publicly was an appointment for life and one that he intended to fulfill. In the early 1970’s, when Marshall fell ill and was asked by an associate of President Richard Nixon how he was feeling, he responded by writing “Not yet!” on a piece of paper. Later, when asked when he planned on retiring, he stated, “I plan to serve until I’m 108 years old and I will leave then when I’m shot by a jealous husband.”²⁷ In June 27, 1991, he announced his retirement because as he so eloquently stated, “I’m old. I’m getting old and falling apart.”²⁸ After his retirement, when asked at a press conference how he would like to be remembered, Marshall’s reply was as someone who “did what he could with what he had.”²⁹ This was the same response he had given his law clerks in 1980. He died on January 24, 1993, three days after Martin Luther King’s 64th birthday, at 2:00p.m., in Baltimore at the age of 84. He lay in state on Lincoln’s catafalque at the Supreme Court and as Charles J. Ogletree, Jr. recollected “I was particularly struck by the number of elderly black women and men who walked around his casket whispering and telling stories about the “colored lawyer” whom they all remembered fighting for justice when they were much younger. It was not the judges, lawyers, or celebrities who stood out that day. It was the common, everyday, voiceless, and powerless African –Americans who came to mourn the death of a legal giant.”³⁰

The landmark decision of the civil rights era was *Brown v. Board of Education*.³¹ The *Brown decision*, in reversing the separate but equal doctrine was a monumental victory for the

²³ L. Marvin Overby, Beth M. Henschen, Julie Strauss, Michael H. Walsh, “African-American Constituents and Supreme Court Nominees: An Examination of the Senate Confirmation of Thurgood Marshall,” *Political Research Quarterly* 47 (4) (1994): 844.

²⁴ Cooper, “TM,” 1232.

²⁵ Overby, Henschen, Strauss, Walsh, “African-American Constituents and Supreme Court Nominees,” 843-844.

²⁶ Overby, Henschen, Strauss, Walsh, “African-American Constituents and Supreme Court Nominees,” 845.

²⁷ Charles J. Ogletree Jr., *All Deliberate Speed* (New York: W.W. Norton & Co., 2004), 177.

²⁸ Ogletree, *All Deliberate Speed*, 179.

²⁹ Cooper, “TM,” 1233.

³⁰ Ogletree, *All Deliberate Speed*, 180.

³¹ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

black community at the time, and promised the beginning of a new era of equality. It is interesting to note that *Brown* became more popular than Marshall ever would as an individual. However, as the string of Supreme Court rulings that followed *Brown* prove, the fight for equality and integration was far from over. May 17, 2007 marked the 50th anniversary of *Brown*, and just as the case had been criticized in all those years, the real success of *Brown* continues to be questioned. Even Marshall himself questioned the success of *Brown*, especially in the light of the Court's unwillingness to create a timeframe for desegregation, stating only that it should proceed "with all deliberate speed." One of the larger criticisms of *Brown* is that it was narrowly decided, focusing solely on the desegregation of public schools and thus failed to reach beyond the public educational arena. However, even in the midst of the controversy and criticism of *Brown*, the role of Marshall is in many ways is guarded and his reputation as a great contributor to the advancement of equality of all is left intact. It is *Brown* that is attacked rather than Marshall.

While *Brown* was the center of attention for Marshall's legal contributions in the mid 1950s, Marshall would end up commonly known as being the first African-American to serve on the U.S. Supreme Court. Ironically, it was Marshall's appointment to the Supreme Court that forced his participation in the civil rights movement to be curtailed, in large part because of the conservative majority of the bench at that time. His writing while on the Court that provides a glimpse of the consistency of Marshall's legal beliefs and scholarship, in particular on issues of education and criminal rights.

In the first decade on the court, Marshall was able to preserve the *Brown* mandate, but as the years continued and the Court grew more and more conservative, he would find himself more commonly the voice of dissent. Yet, he continued to fight for equal access to education as is evidenced in many of his writings (more often than not, in the form of a dissent) on the Court. One early example is *San Antonio Independent School District v. Rodriguez*.³² *Rodriguez* raised the issue of financial equity in the Texas education system. The question before the court was the validity of the Texas school financing system. The original complaint argued that the method used by Texas to finance public education created inequities in education and violated the equal protection of the 14th Amendment. The case further asserted that education was a fundamental right. The Court held that the Texas school financing system based on local property taxes was not unconstitutional. It further made the assertion that education is not a fundamental right. Joining the dissent, Marshall viewed the *Rodriguez* decision at odds with the intent of *Brown*. He believed the decision was a "retreat from [the] historic commitment to equality of educational opportunity and as unsupportable acquiescence in a system that deprives children in their earliest years of the chance to reach their full potential as citizens."³³

Marshall was also critical of ensuring that the rights of a criminal were not violated by law enforcement and in the legal process. In particular, he was concerned with 4th and 5th Amendment issues and the death penalty. He strongly believed in a criminal's right to a fair jury trial. In *U.S. v. Robinson*³⁴, a police officer pulled over a black man by the name of Willie Robinson. The officer had probable cause to believe Robinson was driving with an expired

³² *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

³³ *Rodriguez*, 411 U.S. 1, 71-72 (Marshall J., dissenting opinion).

³⁴ *U.S. v. Robinson*, 414 U.S. 218 (1973).

license. Subsequent to his arrest, the officer patted Robinson down and found a cigarette package in his left breast pocket which turned out to contain several heroin capsules. Robinson was later convicted of a drug offense. The question before the Court was whether or not the search violated Robinson's 4th Amendment rights, which protects against unreasonable searches and seizures and requires a search warrant to be supported by probable cause. The Court ruled that the search was not a violation of the 4th amendment and stated that a search without a warrant following a valid arrest is reasonable under the 4th amendment. Marshall did not agree with the majority and wrote a dissent in this case, arguing that a search incident to an arrest should only be permissible to check for evidence or weapons in relation to the arrest. He further advocated for a case-by-case analysis of alleged 4th amendment violations.

Marshall was also a staunch critic of the death penalty. He is described as viewing the death penalty as not only cruel and unusual punishment, and thus, a violation of the 8th amendment, but as something that "had never been, and could never be, administered fairly and free of racial bias."³⁵ Marshall disagreed with the Court's handling of death penalty cases over the years. Two key cases dealing with the death penalty were *Furman v. Georgia*³⁶ and *Gregg v. Georgia*.³⁷ In *Furman*, the Court held that the imposition of the death penalty was cruel and unusual punishment and violated the Constitution. Marshall wrote a concurring opinion in the case, asserting that the death penalty is "abhorrent to currently existing moral values."³⁸ In *Gregg*, the Court contradicted its decision in *Furman* and held that the death penalty is not violation of the 8th and 14th amendments under all circumstances. Marshall dissented, advocating for greater procedural protections and some measure of judicial discretion. Following the decision in *Gregg*, Marshall wrote dissents in every single capital case the Court denied judicial review to. In 1986, Marshall enjoyed a small victory in the case *Ford v. Wainwright*,³⁹ which held execution of the insane unconstitutional.

Perhaps it is in the first sentence of Marshall's final dissent in *Payne v. Tennessee* that gives insight to Marshall's legal philosophy and core set of beliefs which were consistent throughout his life. His dissent begins with the following powerful statement: "Power, not reason, is the new currency of this Court's decision making."⁴⁰

³⁵ Sandra Day O'Connor, "Thurgood Marshall: The Influence of a Racanteur," *Stanford Law Review* 44 (1992): 1218.

³⁶ *Furman v. Georgia*, 408 U.S. 238 (1972).

³⁷ *Gregg v. Georgia*, 428 U.S. 153 (1976).

³⁸ *Furman*, 408 U.S. 238, 333 (1972).

³⁹ *Ford v. Wainwright*, 477 U.S. 399 (1986).

⁴⁰ *Payne v. Tennessee*, 501 U.S. 808 (1991) (Marshall J. dissenting opinion).

Interpretations Over Time

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Thurgood Marshall passed away in 1991. Since then, the historical analysis of his life and work has been limited. Most of the literature on Marshall is a tribute to his contribution to the civil rights movement and an analysis of his years on the United States Supreme Court. Therefore, the following explores how Marshall was viewed during his early years as an attorney for the NAACP, the perceptions of his career on the United States Supreme Court as revealed in written tributes that followed his retirement and later his, death, and finally, considers some of the more recent analysis of his contributions to society. Exploring Marshall's life through these phases sheds some light into the historical interpretation of his work and his contributions to the American people and the world at large.

By 1955, Marshall was commonly known as Mr. Civil Rights. He was featured on the cover of *Time* magazine, cementing his role as the most famous civil rights lawyer in the country. In the black community, Marshall was incredibly popular and well-liked. But more importantly, he had also achieved the respect of the legal community. This status would remain consistent throughout his legal career. Interestingly though, Marshall's role and contribution to the civil rights movement is not as commonly known or discussed by mainstream America in the present day. Despite Marshall's vital contributions, most of the attention and success of the civil rights era is attributed to Martin Luther King, Jr. King's work, it is important to note, did not begin until over 20 years after Marshall's efforts began. However, Marshall is highly recognized in the legal arena for his important contribution to the advances of equality that commenced in the late 1940s.

Marshall's influence on the Court and the admiration of his colleagues of his legal work was evident in the unconditional praise he received in the numerous tributes written shortly after his retirement and eventually, his death. Even his intellectual adversaries offered praise. Additionally, when he announced his retirement, Justice Sandra Day O'Connor, and Chief Justice William H. Rehnquist hugged him, which while a common physical act, speaks volumes to their high regard of Marshall. However, Marshall was not completely immune to criticism while on the bench. In the early 1970s, President Richard Nixon would "privately [deride] Marshall to his staff as 'a boob'."⁴¹ The 1979 publication of *The Brethren*, authors Bob Woodward and Scott Armstrong accused Marshall of being lazy and disengaged. It also portrayed a Marshall as not paying attention to the cases before the Court and worse, of being criticized by his fellow justices. The book claimed that Marshall would watch television during work hours and of leaving in the early in the day. Many of Marshall's current and past law clerks came to his defense, as did Justice Lewis F. Powell, discrediting Woodward's work. Marshall himself stated that he did not have a radio, much less a television during this time and indicated that Woodward had never talked to him making what he wrote nothing but lies. By the late 1980s, conservative critics of Marshall would once again revisit *The Brethren's* allegations. In 1989, the *National Review* magazine published an article accusing Marshall of being more interested in *TV Guide* than the cases on the Court's docket and giving his clerks free reign in writing his opinions. They also ran a picture of a sleeping Marshall on the cover.

⁴¹ Williams, "Higher Education of Thurgood Marshall," 355.

Once again, Marshall's supporters were outraged and came out in full support of him and his work. In an interview, Justice William J. Brennan firmly stated that the allegations were lies and that if asked, Marshall would categorize the illustration as evidence of the survival of racism.

With the announcement of his retirement and shortly thereafter, his death, the legal community revered Marshall's character and legal contribution. Most telling are the words spoken of his colleagues on the Supreme Court. The consensus was that Marshall was thought of as a lawyer that all Americans, not just the black community, owed an enormous debt of gratitude. The stories shared by the other Supreme Court Justices described a man who had an uncanny ability to tell a story.

In 1992, following Marshall's death, the Library of Congress released his personal papers, giving unrestricted access to the public. This decision angered Chief Justice Rehnquist to the extent he wrote a letter to the Library of Congress in which speaking for the majority of the active justices on the Court, he said he was surprised and disappointed with the decision. He went further and threatened that in the future, the Justices might not donate their papers to the Library.⁴² The release of Marshall's papers seems symbolic of the characterization that he embodied of the everyday man in both his demeanor and his rhetoric style.

Chief Justice Rehnquist in his tribute to Marshall stated "[we] will of course miss his wise counsel in our future deliberations, but we will equally miss his personal charm, and the innumerable 'tall tales,' based on his extraordinary experiences, with which he often delighted us."⁴³ Marshall was viewed as being the voice of those individuals which in our society are often forgotten. Justice O'Connor viewed Marshall's years on the bench as "[knowing] the anguish of the silenced and [giving] them a voice."⁴⁴ Speaking to Marshall's character, Justice O'Connor in her tribute to him stated that Marshall is a "man who is at once eternally at peace and perpetually at war."⁴⁵

In an essay titled "A Study of Philanthropy through Racial Uplift," Noah D. Drezner analyzes Marshall's contribution to the civil rights movement and his legal work while on the U.S. Supreme Court as a form of philanthropy within the black community.⁴⁶ In a 1968 edition of Newsweek magazine, Marshall was declared to have "done as much to transform the life of his people as any Negro alive today, including Nobel laureate Martin Luther King, Jr."⁴⁷ However, reflecting on his work today, Drezner views Marshall's contribution as casting a wider net to encompass individuals beyond just the black community. Marshall's efforts are viewed as not only focusing on civil rights for blacks, but rather on guaranteeing the rights of all. He used his knowledge of the law to reform society as a whole. Drezner argues that while philanthropy is traditionally defined as the act of making a financial donation, Marshall's work while a lawyer with the NAACP, "was philanthropic in the truest sense."⁴⁸ Through his legal

⁴² Neil A., Lewis. "Chief Justice Assails Library on Release of Marshall Papers." *New York Times*, May 26, 1993, Section A, New York edition.

⁴³ William H. Rehnquist, "A Tribute to Justice Thurgood Marshall," *Stanford Law Review* 44 (1992): 1213.

⁴⁴ O'Connor, "Thurgood Marshall," 1217.

⁴⁵ O'Connor, "Thurgood Marshall" 1218-1219.

⁴⁶ Noah D. Drezner, "Thurgood Marshall A Study of Philanthropy Through Racial Uplift," in *Uplifting a People*, ed. Marybeth Gasman and Katherine V. Sedgwick (New York: Peter Lang Publishing, Inc., 2005), 89.

⁴⁷ Drezner, "Study of Philanthropy," 97.

⁴⁸ Drezner "Study of Philanthropy," 97.

work and success, he was able to care and uplift the disenfranchised and disempowered, displaying a true form of an advocate and in so doing, made the greatest donation to society as a whole.

In present day, Marshall's presence is seen day to day in a very visual and physical way. Marshall is honored in the numerous scholarships, institutions, and buildings that bear his name. Just to list a few, there is a Thurgood Marshall elementary, middle school and high school, academy, and learning center. The University of Maryland School of Law, where Marshall had hoped to attend, named its law library after him. There is the Thurgood Marshall Legal Education Opportunity Program, the Thurgood Marshall Scholarship Fund, a federal judiciary building and an airport named in his honor. These are examples of more than just honoring his name, but in some sense, they also represented just how far his efforts reached our society.

All throughout history, Marshall was revered for his contribution to society. He was a man who believed the method was to achieve change through the legal system, through the courts. He believed that all action must be legal. This was a consistent theme throughout his life, one that he lived and others admired.

Recommendations for Teachers

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Lesson Plans

Agnes Dunn and Eric Powell, "[From Jim Crow to Linda Brown: A Retrospective of the African American Experience from 1897 to 1953](#)" (The Library of Congress, 2002), grades 9-12

While the focus of this lesson plan is more expansive, the exploration of segregation in this one week mini lesson, allows high school students to develop an understanding of the complex themes and concepts of the African-American experience during this time period. While incorporating research throughout, the lesson plan begins with a simulation of the Afro-American Council Meeting of 1898 and culminates with the creation of a similar meeting prior to the *Brown* case. Thoroughly developed, the site includes teacher material, including teaching and learning guides and well-defined activities and resources for the students. The inclusion of student resource guides, divided themes (segregation and violence, solving the race problem, and contributions to the nation) directs students to research sources. This lesson is well worth a look.

["Dialogue on Brown v. Board"](#) (American Bar Association, 2003), grades 8-12

This eight page document provides five lessons for high school level students. It includes background information and discussion starters. A great source of information.

Dr. Jacqueline Hansen, "[Thurgood Marshall American Hero](#)" (American Philatelic Society, 2003), grades 2-12 [\[PDF\]](#)

This website in provides three lesson plans authored by Dr. Jacqueline Hansen from Murray State University and published by the U.S. Postal Service. The first part of the document, contains a three page summary of Marshall's life and career, providing background information for the lessons plans. The lesson plans are divided into three units: 1) "A Thoroughly Good Man", which focuses on writing a biography and developing a timeline; 2) "Justice for All", which investigates the people, roles, and responsibilities of the courtroom; and 3) "Bridges to Freedom", which look at *Brown v. Board*, Ruby Bridges, and what defines an American hero. While written for individual student work, the first lesson also provides a variation on the activity that allows students to work on the biography project as a class. The second lesson plan includes the use of K-W-L chart and offers an opportunity for student debate. The third lesson plan recommends websites and suggested readings (primary level and upper elementary level) that enhance the lesson plan. At the end of the document, there is a crossword puzzle containing key terms.

["If You Were a Supreme Court Justice..."](#) (Landmark Supreme Court Cases, 2007), grades 9-12

This lesson plan can be used as individual or group work. The lesson plan offers a brief description of four desegregation cases and the students are asked how they would decide the case if they were a Supreme Court justice. After the discussion, with links provided directly on the site, the students can read the decision in the case. This lesson

is a great way to see the influence of *Brown* beyond the civil rights movement and discuss what *Brown* was able to accomplish and where the decision came up short.

Martin E. Wisneski, "[Brown v. The Board of Education Activity Booklet](#)" (Washburn University Law Library, 1997), grades K-2

This is not a traditional lesson plan, but it includes activities that can be incorporated into a lesson plan for younger elementary grades. The activities included are a court maze, a school maze, a word search, and a find the items activities. This is the online publication of the book and the activities may require reproduction for your use, but even so, it is well worth spending just a few minutes at this lesson plan. Reproduction should not be difficult.

Places to Visit

[Brown v. Board of Education National Historic Site](#) (National Park Service), grades K-12

This site maintains the *Brown v. Board of Education* historic site in Topeka, Kansas, which is the former Monroe Elementary School. The park offers several self-guided exhibits and also shows the award winning film *Race and the American Creed*. The online site offers a teachers section that includes curriculum materials and distance learning opportunities. Also, there is a photos and multimedia section that is currently under construction which should provide some interested material to use with students.

Websites

Stephen Smith and Kate Ellis, "[Thurgood Marshall Before the Court](#)" (American Radio Works, 2009), grades 6-12

This is an interactive website that covers Marshall's life and career through the use of a timeline. The timeline of Marshall's life has easy to read information about key events and printable points of the timeline. It also contains links to two articles, *Remembering Thurgood Marshall* and *Essays on the Brown Legacy*. Students could very easily spend 10 to 15 minutes on this site and get a brief overview of Marshall's life and historical significance.

["Brown v. Board of Education \(1954\)"](#) (Landmark Supreme Court Case, 2007), grades K-12

Beginning with a short biographical summary of Thurgood Marshall, this site has a series of lesson plans and teaching recommendations revolving around *Brown* and the civil rights movement that are grouped based on the time available and the particular area, such as one titled "If you Were a Supreme Court Justice..." While presenting a large amount of information, the site can be easily explored and within a few minutes you could identify an activity that would be relevant to your particular needs.

[“Brown v. Board of Education, 1954: Annotated Bibliography of Selected Children’s and Young Adult Books”](#) (The School Collection: Children’s Literature at the Education & Social Science Library, 2008), grades K-12

Although not specifically referencing Marshall, this website provides a list of children’s and young adult books separated under three categories, *Brown v. Board of Education*, School Segregation, and Civil Rights. The list includes fiction and non-fiction books. Each title includes a short summary of the book, the call number, total number of pages, and the reading grade level.

[“Civil Rights Digital Library”](#) (University of Georgia, 2009), grades K-12

This website’s purpose is to document America’s struggle for racial equality of the 1950s and 1960s. It features a collection of educational materials and primary resources of this era.

Juan Williams, [“Thurgood Marshall American Revolutionary”](#) (Juan Williams, 2008), grades 6-12

This is a website developed by Juan Williams, the author of the biography *Thurgood Marshall American Revolutionary*. The site offers a brief summary of Marshall’s life, along with a sampling of interviews Marshall gave on a broad range of subjects such as his early life, Martin Luther King, Jr., and his fellow justices on the Court. There is a gallery of photos and a section that includes speeches given by Marshall and Williams on Marshall. If you need quick information about Marshall or want to use some of his speeches in your class, this is a good website to visit.

[“Putting the Movement Back Into Civil Teaching”](#) (Civil Rights Project, Teaching for Change, 2005) educators of grades 9-12

This is the companion website to the book *Putting the Movement Back into Civil Rights*. It offers a global and national perspective of civil rights. There are numerous resources on this site to help educators teach their students critical thinking using the civil rights context. This website is worth visiting if you are interested in expanding your students’ notion of civil rights and have time to view the information provided.

[“Separate Is Not Equal Brown v. Board of Education”](#) (Smithsonian National Museum of American History Behring Center, 2009) grades 2-12

The website contains a historical summary of *Brown*, a list of resources, and a list of public programs, many of which have links to the information shared at the particular session. Of particular interest is the “Exhibition” section which has a short photograph exhibition of the civil rights era that could be shown to elementary students.

[“Thurgood Marshall Tribute”](#) (Thurgood Marshall College Fund, 2008), grades K-12

This website is managed by the Thurgood Marshall College Fund and is commemorative of Marshall’s life and legacy. It includes the following: a timeline of his life, photos, videos, speeches, interviews, tributes from Marshall, and general biographical information. The website is well organized and easy to search. This would be a great website for students to visit.

Additional Resources

Alonzo N. Smith, "[Separate Is Not Equal Brown v. Board of Education, A Teacher's Resource Guide to Preparing Curriculum Materials](#)," (Trinity College, Educational Studies, 2004)

This is an electronically-published version of a teacher's guide written right before the 50th anniversary of *Brown v. Board*. Its intended audience is teachers from ranging from grade school level to college. The outline for the guide is as follows: 1) A Narrative, 2) Study areas of Brown, 3) Discussion Study Topics, and 4) List of Sources. Although the focus of this teaching guide is *Brown*, because of Marshall's role in the case, this is a good cite to visit for more information on this era. Additionally, the site has a list of discussion questions listed by grade level that would be great to use in a classroom. The list of sources contains a list of books, articles, videos, and a list of websites that offer comprehensive information on *Brown* and on Marshall. While a long teacher's guide, you could easily skim for quick information and if you have time, explore the recommended resources for more information.

Videos: The videos below include cases dealing with educational equality of numerous ethnicities. In discussing the work of Marshall and the civil rights movement, these videos would showcase the struggle of different groups for educational equality.

In Pursuit of Freedom and Equality: Brown vs. The Board of Education of Topeka, 27 min., The Brown Foundation, Topeka, Kansas

Mamie Tape and the Struggle for Equality in Education. Produced by Loni Ding... The story of the segregation of a Chinese American child in the public schools of San Francisco in 1883. 30 min. (?) 1999.

Mendez v. Westminster (Para Todos Los Ninos). A school desegregation lawsuit on behalf of Mexican American children in Orange County, California. 30 minutes.

The Lemon Grove Incident. Paul Espinosa, producer. Frank Christopher, director. 58 min, Documentary. Cinema Guild, 1985. Videocassette. Segregation of Mexican American children in California

Thurgood Marshall. A biography by the A & E network. February, 2000

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Primary Source Materials

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

The landmark decision in which the U.S. Supreme Court declared separate public school educational facilities inherently unequal and thus, unconstitutional. The case overturned the separate but equal doctrine upheld in *Plessy v. Ferguson*, 163 U.S. 537 (1896), and while it did not prove a specific timeline for desegregation, it did mark the beginning of the desegregation of public schools. Marshall is most commonly known for delivering the oral argument to the Court in *Brown* and successfully winning the case.

[Full text available online.](#)

Tushnet, Mark V. *Thurgood Marshall: His Speeches, Writings, Arguments, Opinions, and Reminiscences*. Chicago: Chicago Review Press, 2001.

This book is a collection of Thurgood Marshall's legal documents, oral arguments given in the desegregation cases, investigative reports, and his speeches and articles spanning the life of his career. This collection of Marshall's work serves as an oral autobiography and historical insight into Marshall's contribution and efforts throughout the civil rights movement and the remainder of his legal career.

Full-length Biographies

Goldman, Roger, and David Gallen. *Thurgood Marshall: Justice for All*. New York: Carroll & Graf Publishers Inc., 1992.

This book is divided into three sections: 1) "Recollections of Thurgood Marshall"; 2) "The Jurisprudence of Thurgood Marshall"; and 3) "The Opinions of Thurgood Marshall." Section one is a collection of the tributes written of Thurgood Marshall by his legal colleagues. Section two is an essay written by Goldman discussing Marshall's jurisprudence. The third section is a collection of opinions and dissents written by Marshall while on the Supreme Court.

Ogletree, Charles J. Jr. *All Deliberate Speed: Reflections on the First Half-Century of Brown v. Board of Education*. New York: W.W. Norton & Co., 2004.

Ogletree, a Harvard Law School professor, discusses the shortcomings of *Brown*, focusing on the Supreme Court's decision that desegregation was to proceed at "all deliberate speed." There is an analysis of the case law leading up to *Brown* and then of the *Brown* itself. Weaved throughout the book is Marshall's contribution as Ogletree discusses the legal strategies of *Brown* and other civil rights litigation. Marshall's career post-*Brown* is also included, along with an analysis of current law dealing with equity in education.

Tushnet, Mark V. *Making Civil Rights Law Thurgood Marshall and the Supreme Court 1936-1961*. New York: Oxford University Press, 1994.

Tushnet, who served Marshall's law clerk in 1972, skillfully creates a narrative of legal history of the civil rights movement, focusing on the litigation of this era. While the main focus of this book is the litigation of the civil rights movement, much of the discussion revolves around Marshall's contribution to the civil rights movement through his lawyering skills. The book does include legal cases in which Marshall was not directly involved. However, through the book's focus, Marshall is portrayed as a man incredibly lawyering skills, and through his work, Tushnet lays the framework for the legal work and accomplishments of the civil rights movement.

Williams, Juan. *Thurgood Marshall American Revolutionary*. New York: Random House, 1998.

Considered the best biography of Thurgood Marshall, this biography contains his personal history and that of the civil rights movement. It is a fascinating and quick read and thoroughly covers the many aspect of Marshall as a man and a great legal mind. Beginning with his early life, the book continues to map Marshall's career, weaving details about his personal life. There is discussion of numerous signification legal cases and issues Marshall confronted on while on the Supreme Court. Also available is a [companion website](#) to this book.

Article- or Chapter-length Biographical Sketches

Cooper, Janet. "TM." *Stanford Law Review*, 44 (1992): 1231-1235.

Written by Marshall's law clerk of the later 1970s and early 1980s, the article is a tribute to Marshall's life and is an account of Marshall's character while a Supreme Court Justice. It includes stories Marshall shared with his law clerks throughout the year which allow the reader a view of Marshall as a person.

O'Connor, Sandra Day. "Thurgood Marshall: The Influence of a Racanteur." *Stanford Law Review*, 44 (1992): 1217-1220.

O'Connors tribute to Marshall in which she talks about his story telling abilities and his influence on her while they were colleagues on the Supreme Court. It is a three page documents where O'Connor recollects stories Marshall shared with her persnally and the Court. This is a fast read and gives inside to Marshall's character and personality.

Tushnet Mark. "Lawyer Thurgood Marshall." *Stanford Law Review*, 44 (1992): 1277-1299.

This article focuses on Marshall's skills as an attorney. It covers his trial and appellate career and includes analyses of the major cases focusing on the legal strategies and the relation to Marshall legal skills.

Williams, Juan. "The Higher Education of Thurgood Marshall." *The Journal of Blacks in Higher Education*, 22 (1998-1999): 82-88.

This article is based on William's biography Thurgood Marshall American Revolutionary. The article focuses on Marshall's upbringing and his educational career.

Juvenile Biographies

Adler, David A. *A Picture Book of Thurgood Marshall*. New York: Holiday House, 1997.

This children's biography of the life and career of Thurgood Marshall includes basic facts of Marshall's career highlights and brief summaries of key legal cases. The book includes illustrations and quotes by Marshall, and a timeline of key dates in Marshall's life is found at the end of the book. Recommended for 2nd to 4th grade readers.

Crowe, Chris. *Thurgood Marshall (Up Close)*. New York: Penguin Group, 2008.

A fourteen chapter biography, this book covers Marshall's life and legal career. It begins with an introduction titled "David v. Goliath" where the oral arguments of *Brown* are described in detail. The book includes some black and white photos as well as direct quotes from primary sources. This is a good biography for a young reader. Recommended for 6th -8th grade readers.

Dunham, Montrew. *Thurgood Marshall (Biography Series)*. New York: Simon & Schuster, 1998.

This children's biography emphasizes the childhood of Thurgood Marshall. Overall, the book is consistent with Marshall's character as seen in his other biographies and historically correct. However, it does contain fictionalized anecdotes and conversations to interest young readers. Recommended for 2nd to 5th grade readers.

About the Author

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A native El Pasoan, Isela Peña, holds a Bachelor of Arts in Political Science from the University of Texas at El Paso and a law degree from Columbia University. Currently working with the El Paso Collaborative for Academic Excellence, her work focuses on all facets of college readiness within all levels of education. Committed to student learning and success, she looks forward to teaching this coming fall as she continues to pursue a Master of Arts in History.