Growing Up Marshall: Life, Legacy & Lessons Learned

John W. Marshall

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview

Part of the Legal History Commons, and the Supreme Court of the United States Commons

Recommended Citation
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol70/iss2/5
Growing Up Marshall:
Life, Legacy & Lessons Learned

JOHN W. MARSHALL†

“You can have all the money in your hands, all the possessions anyone can ever have. But it’s all worthless treasure. True worth is only measured, not by what you got, but what you’ve got in your heart. You can have, you can have everything, but what does it, what does it mean? It all means nothing if you don’t stand up for something.”

Those are some of the lyrics from the song “Stand Up for Something”1 that was beautifully sung by Andra Day and featured at the end of the 2017 movie Marshall,2 starring Chadwick Boseman, which I will talk about a little later.

This evening I will share with you some reflections about a man who spent sixty years of his life, always, always,
always standing up for something. And that is my dad, Justice Thurgood Marshall.

Now, knowing my audience, if you thought that I would provide some legal or case analysis with an audience of attorneys and soon-to-be attorneys, I am not going to go there. But what I am going to do is share some memories and what you do not read in the history books. At my dad’s memorial service, Chief Justice Rehnquist said the following: “Inscribed above the front entrance to the Supreme Court building are the words ‘Equal Justice Under Law.’ Surely no one individual did more to make these words a reality than Thurgood Marshall.”

So tonight, what I am going to do is try to answer some questions that I am often asked. And I am going to start with the one most commonly asked: what it was like growing up as the son of Justice Marshall?

I always begin by saying that when you grow up in a household where your dad won twenty-nine of thirty-two cases that he argued before the United States Supreme Court, you quickly realize that your chances of winning an argument are slim. But, that does not mean that my brother, Thurgood Marshall, Jr., who is an attorney, and I did not occasionally try.

One story that I will share with you is when I was a young teenager growing up in Northern Virginia, actually in the home that I am speaking to you from tonight. All my friends had either a mini bike or a go-cart, and they zipped around the neighborhood. I did not have either one. And I wanted a mini bike. I told my dad that I wanted a mini bike, he said no. But I was persistent; I wanted a mini bike, please I want a mini bike. Yet the answer was repeatedly no. I even tried my mother, but she sent me back to my dad. So then I said okay, let me try the Thurgood Marshall civil rights playbook. I tried to argue for equal access to modes of transportation. But I was not successful.

So just when I had about given up, one day, my dad pulls
up in the carport and comes in the house and has a disgusted look on his face. He throws me the keys to the car and says, “I give up. I am tired of hearing about it. There is something in the trunk for you.” So, you know, as President Obama said, this was my moment in time. This was my pivotal Brown v. Board of Education moment. I had scored my biggest ever victory.

So, I walked out to the car, opened the trunk, and inside the trunk was a box. I was a little bit puzzled. But then I figured, okay, he is going to make me work for this. This is probably a mini bike that I am going to have to assemble. But then I opened the box, and I looked in it only to see books, in particular, law books. One of them was the Virginia Motor Vehicle Code, with several pages marked with sticky notes. I opened to one of the pages, which dealt with the illegality of riding mini bikes on the public streets of the commonwealth of Virginia, and another page, which dealt with the requirement that to operate a motorcycle or mini bike, you need to have a driver’s license which I was not old enough to have. So clearly, my dad’s law clerks—this was when he was on the Supreme Court—had to do some “all other duties as assigned” and did some research on Virginia motor vehicle law. But what I will most remember is while shaking my head as I looked into that box, I looked to the side to the kitchen window where I could see my mom and my dad had their faces glaring out the window, laughing uncontrollably. My landmark victory was not to be.

Speaking of which, my mom is ninety-three and is doing great. And as I said, my older brother Thurgood, Jr., is an attorney. So, so many fond memories. And with tonight’s audience, I think one of them too that I think appropriate to share with you is regarding my dad’s law clerks who I just mentioned.

My dad had over one hundred law clerks during his time on the Supreme Court and also the four years he spent on the Second Circuit Court of Appeals. Those law clerks are all part of the Marshall family. We have stayed in touch with so
many of them and are so proud of all of them. You should know too how hard those law clerks work. I would occasionally visit my dad’s chambers, and I would go into the law clerk’s offices—he would have four per term. I would look at them, and I would say jokingly say, “My gosh you guys look tired, what have you been here all night?” And many times, they shook their heads, because yes, they had in fact been there all night, took turns taking a quick nap on the couch, and then gone back to work. Very demanding work, but I know talking to all of them how rewarding it is.

Every term my dad would have the clerks come out to the house here in Northern Virginia for dinner. It was always a very relaxed, casual event to get away from the business of the court. But there is one of those dinners that I remember in particular. It was with his clerks in 1988, and I sat down and talked with one of them. She was so excited to be a clerk for my dad. She was so enthusiastic about the law and being an attorney and just having the opportunity to clerk there in the Supreme Court and work for my dad.

The reason I share this story in particular is because this clerk went on to become the Dean of the Harvard School of Law. She then followed in my dad’s footsteps as the Solicitor General of the United States, and now sits on the Supreme Court: Justice Elena Kagan. We are so proud of her, as we are all the clerks.

A few years ago, my oldest granddaughter, for one of her college courses, came to me and said, “Hey Papa, I have to go and hear a case in court. Do you think you could take me to the Supreme Court to hear a case?” And I said, “Absolutely.” I took her to the Court, and I will never forget as we were sitting in the family section which was the first time I saw Justice Kagan on the bench. I cannot tell you the emotions, and how proud I was to see her up on the bench. And I know my dad is so incredibly proud of her. She also took the time after the case—we spent an hour with her in her chambers—and she asked my granddaughter questions about the case, how she thought the lawyers did arguing the case. It was just
an incredible hour. And then I got to thinking. I told her as we were driving home, “Breauna so you were required to go listen to a case in court. So you got to go to the Supreme Court, and hear a case there, and you got to spend an hour with Justice Kagan. If this does not get you extra credit, I do not know what will.” But again, so gracious of Justice Kagan to spend that time with us.

Back to growing up, my parents always stressed education to us and that education came first to realizing our dreams. I think a lot of that had to do with the fact that my grandmother, my father’s mother, Norma Marshall was a schoolteacher. And my grandfather, my father’s dad, William Marshall, was a Pullman porter on the trains and also worked as a waiter, the head waiter, at an exclusive all-white country club in Baltimore, Maryland. I have to say it properly “Bawl-murr,” where my dad was born July 2nd, 1908.

Originally, he was named Thoroughgood. As the story goes, he was tired of spelling out his name, so he shortened it to Thurgood, which stuck with him obviously the rest of his life. Also, at grade school apparently in Baltimore, my dad occasionally acted up in class. Teachers had a difficult time trying to rein him in. So they came up with something creative. They thought, rather than just send him to the principal’s office, they would send him to the basement of the school with the U.S. Constitution and tell him to start memorizing sections of the Constitution. Little did they know that they were preparing a future Justice on the Supreme Court.

My dad went on to attend college at Lincoln University in Pennsylvania. Originally, he went thinking he would then go onto be a dentist. His older brother, Aubrey, was a doctor, and my dad thought he would go into dentistry. But he changed his mind about halfway through his time at Lincoln, and decided he wanted to be an attorney. He thought that we are close to the University of Maryland, I want to go to the University of Maryland Law School. But he was turned down
because of the color of his skin. So he vowed that one day, he would make the University of Maryland pay.

But you know the old saying everything happens for a reason? That is exactly true here, because my dad ended up taking a bus every day into Washington, D.C., to attend Howard University School of Law, where he met his mentor Charles Hamilton Houston. I can never talk about my dad—the attorney, the judge he went onto become—without talking about Charles Hamilton Houston. He gave all the credit to Mr. Houston, who at the time was the Vice Dean at Howard Law School. My dad said the following about Mr. Houston: “I never worked hard until I got to the Howard Law School and met Charlie Houston. I saw this man’s dedication, his vision, his willingness to sacrifice, and I told myself, ‘You either shape up or ship out.’ When you are being challenged by a great human being, you know that you can’t ship out.”

Mr. Houston saw something special about my dad and took him under his wing. During academic breaks, my dad would travel with Mr. Houston to southern states to argue civil rights cases. My dad would actually be in the car with a manual typewriter on his lap as Mr. Houston would be driving many times and dictating legal briefs to my dad. So my dad got to see him argue cases and prepare for civil rights cases first hand, an incredible experience for a young law student.

He also shared a story: They were in a small town, where literally in the homes there were dirt floors. A very poor area. They were interviewing some people with regard to one of Mr. Houston’s cases. My dad had packed his bagged lunch, and he sat down on a porch and started eating his lunch. A little boy came up and kept staring at this orange my dad had sitting there from his bag. My dad could tell that little boy wanted that orange. So he gave him that orange. And the little boy just started biting into the orange, and shaking his head, and destroyed the orange and just threw it on the ground.

My dad told Mr. Houston the story, and he said, “You
know I was thinking about that orange all day, and finally when it came time to eat it, I saw this little boy and he wanted it so I gave it to him, and then he bit into it and wasted my orange.” And Mr. Houston got very upset with my dad. He said, “Don’t you understand what just happened?” And my dad said, “No!” And Mr. Houston said, “That little boy has never seen an orange. And he does not know how to eat that orange.” My dad said he was very embarrassed.

Mr. Houston challenged his students at Howard Law School. Mr. Houston told them the following: “Get your law, and get it straight. Get your research, and dig deeper. When you plan, plan twice. When you map out your case, take not the two possibilities, but assume two others. You’ve got to do better than the other man. Nothing can we get from the executive side of the government, nothing can we get from the legislative side. If we’re going to get our rights, we’re going to get it when the Court moves.”

My dad went on to graduate number one in his class at Howard Law School followed by Oliver Hill as number two. Oliver Hill is a name that I will mention again later.

But as I said before, my dad vowed to make the University of Maryland pay for having denied his admission. Together with Mr. Houston, my dad served as co-counsel in the case of Murray v. Pearson, a 1936 case filed on behalf of Donald Murray, a qualified African-American, who like my dad was denied admission to the University of Maryland Law School because of the color of his skin. And my dad and Mr. Houston were successful. The Maryland Court of Appeals ordered the University of Maryland to admit black students to admission.

That case, and several others that my dad worked with Mr. Houston, was beginning the foundation for the strategy for what later would be known as Brown v. Board of Education. Strategy sessions were held actually back at

---

3. See 182 A. 590 (Md. 1936).
Howard Law School as the lawyers prepared for that case. And there were a lot of doubters, people who were encouraging my dad not to take that case on, saying, “It wasn’t time.” They also said, if you lose that, then the Plessy doctrine of separate-but-equal will just be cemented firmly as the foundation of the country; we cannot take that chance. My dad argued back at them, saying, “Well if not now, then when? We are going to do this.” And they did.

Brown v. Board of Education was actually five cases consolidated. Cases out of District of Columbia, Delaware, South Carolina, Virginia, and the case of Brown v. Topeka, Kansas, Board of Education and Linda Brown, the young African-American child who was not allowed to enroll in an all-white school close to her home. Now, the basic argument in Brown v. Board of Education was that the separate-yet-equal doctrine, known as the Plessy doctrine, denied Fourteenth Amendment guarantees of equal protection under the law.4

I want to read to you a couple of experts from my dad’s arguments before the justices of the United States Supreme Court for that case.

“I got the feeling when I heard the discussion yesterday that when you put a white child in a school with a whole lot of colored children, the white child would fall apart or something. Everybody knows that is not true.”

And he closed his argument with the following: “The only thing 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.”

On May 17, 1954, Chief Justice Earl Warren delivered the opinion of the Court—the unanimous opinion of the Court. It was so important not to send a mixed message, but

---

to send a unanimous decision. Chief Justice Warren said that “[w]e conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” And thus the integration of our nation’s public schools and so many other facets of society and life in our country. Now when it came to Brown v. Board of Education and so many of the other victories that my dad, the NAACP, and the NAACP Legal Defense Fund argued and won, people would want to give him awards or give him accolades, and he did not like the recognition. He did not like awards. But when he was asked about it, he would always say number one that Brown v. Board of Education was Charlie’s victory, referring to Charles Hamilton Houston who had crafted the strategy for that case. And second, he would give credit to his brilliant legal team: Robert Carter, Jack Greenberg, Oliver Hill (who you will remember was number two in my dad’s law class), Constance Baker Motley, James Nabrit, and Spottswood Robinson. Also, it is interesting to note that three of those six went on to themselves become federal judges: Robert Carter, Constance Baker Motley, James Nabrit, and Spottswood Robinson. But those are all names that I hope that particular to the students there, please take the time to look up those people and learn about them: Robert Carter, Jack Greenberg, Oliver Hill, Constance Baker Motley, James Nabrit, and Spottswood Robinson.

But ultimately, my dad would acknowledge all those people. He would say you know what though, it’s not me, it’s not them. The credit for Brown v. Board of Education and all of the civil rights cases, he would say, should go to the unsung heroes. What did he mean by that?

Well, I remember traveling with my dad by train once from D.C. to New York; he always loved traveling by train. We were sitting there waiting to leave Union Station, and my dad was looking out the window. I noticed that he had tears.

5. Id. at 495.
in his eyes. So I asked him, “Dad, what is wrong?” And he shared with me that looking out that window at people reminded him of all the times he had traveled by train to southern states and southern towns to argue cases, civil rights cases. Many times people who insisted on their day in court lost their jobs, lost their homes, and some even lost their lives just because they insisted on their day in court. They would always accompany my dad to the train station when he would leave to go back to New York City. My dad told how he would look out the window at them and feel guilty at what might happen to them as a result of arguing their case. And he told me, “Those are the real heroes. Those are the unsung heroes.”

I will read you a quote from my dad about these people: “I want at all times to recognize those who stayed there. I value them not only because of the kind of people they were, but because of the kind of nation they insisted we become. I respect them not because of the influence they wielded, but because of the power they seized. It is useful, I think, to recall their stories, not to dwell on the past, but to see concrete evidence of what was in order to gain the inspiration for what can be.”

Back to other questions I am asked. One I often get is: “what did my dad think about me becoming a Virginia State Trooper?” I always start that one by saying I can remember it like yesterday, sitting in the living room, and telling my mom and dad what I decided to do. And you talk about the “awkward silence.” I really surprised them. But my parents always told my brother and I that it was our choice what we wanted to do with our careers as long it was something that we believed in and something we would give our best to every day. I think I really pushed the envelope. But you need to know that because my dad had a lot of experiences with law enforcement when he was arguing those cases in those southern states that were not good.

There was a case that he was arguing in Tennessee, and that evening as he and some other attorneys were traveling
back to a safe house where they could stay at night, the car was pulled over. The police officers took my dad out of the vehicle and drove off. It ended up they took him by a river there in Tennessee where there was a lynch squad waiting for him. And thank goodness, the other attorneys with my dad quickly gathered as many people as they could and got there in time to stop that. But that was their intention that night, to lynch my dad, and in that crowd were law enforcement officers. So when his son then decides that he is going to become a law enforcement officer, I can understand where my dad was coming from and how he reacted.

But he totally supported me. I remember going through State Police Academy and coming home on weekends and he would ask me, what did you learn last week, kind of in a sarcastic tone sometimes. And I will never forget, I said, “I am so glad you asked me that question, because we spent the last week—forty hours—on constitutional law. And guess what dad, next week, forty more hours on constitutional law.” And he was surprised.

When it came time for graduation, they offered for him to sit on the stage or have a VIP seat. He said, “Absolutely not.” He said that he was going to sit with all the other proud family members. And that he did. He showed up just a few minutes before graduation started and sat towards the back of the room.

I remember going to my parents home in Northern Virginia for a little party after my graduation. With the Virginia State Police, you are actually issued a take-home cruiser. So I had this brand new, shiny police car and came to the house. And my dad said, “Come on, I want to go see this car!” So we went out in the driveway, and he pushed me aside because he wanted to sit in the driver’s seat. And needless to say, he pressed every button in there: he turned on the emergency lights; he turned on the siren; he even turned on the loud speaker. He was just having a good old time in my new police car. But we turned everything off, and it got quiet. And he reached into his pocket, and he handed
me this: a pocket-sized Constitution of the United States of America. This is the actual one that he gave me on December 19th, 1980, after my graduation. And he told me to make sure that I always keep this with me and follow it to the letter and I would be fine. And that is exactly what I did. This was never far from me in my twenty-eight years in law enforcement and public safety. That is what guided me.

I talked about the movie *Marshall*. At the end of the movie in the credits, you can hear my dad’s voice. And he says, “You know, there are so many people, indeed my own sons at times, look at me with an expression on their face that they don’t believe what happened in the past. Well if we don’t look out, it is going to happen again.”

When I heard that, it was a surprise to me when I went to see the movie for the first time. It reminded me of a story when I was a Virginia State Trooper in uniform with another trooper. I was on the SWAT team, and we had traveled to another part of the state to bring an armored vehicle back up to Northern Virginia. I needed to use the restroom, and stopped. It was a rural area we were driving through, and I stopped in this general store, a small market. I walked in, and there was a man behind the counter. He said, “Can I help you?” And I said, “Yes, sir. I was just hoping that I could use the restroom. Do you have one here?” He then said, “I do, but you can’t use it.” And I said, “Excuse me?” He said, “It is not available to you.”

As he was saying that, a lady came walking out from the back, I assume who was his wife, and said, “What’s going on?” And I said, “I just stopped in ma’am to see if I can use the restroom. But apparently, this gentleman is telling me that it is not available to me.” Now keep in mind that I am in full State Police uniform. She looked at the man with a disgusted look, said, “Trooper, there is a restroom,” and then directed me to it.

But when I heard my dad’s voice and heard that, it reminded me, because yes, I had doubted growing up a lot of what he told me. And he could tell. I thought his stories were
exaggerated. I led a sheltered life until I went out into the real world as a Virginia State Trooper. And I saw it that day.

Thank goodness, we didn’t have cellphones then, because I probably would have called him that day. But instead, the next day, I went and sat down with him and shared the story and told him what happened. And it was silence. He just shook his head and didn’t say a word. But in his face, I could see what his message was: We still have a lot of work to do. He had a lot of work to do. I had a lot of work to do. And our country still had a lot of work to do.

Speaking of the movie *Marshall*, I’m often asked about my connection to that movie. In 2014, I was giving a speech in Bridgeport, Connecticut. At that event, I was introduced to an attorney by the name of Michael Koskoff. He shared with me that he was also working on a screenplay for a movie. He was working with his son, who was actually a screenplay writer, Jacob. It was about a 1941 case that my dad had been involved in. I admitted to him that I had not heard of that case. So he shared with me a little about the case.

Also at the table was Lauren Friedman, the daughter of Samuel Friedman, the Jewish attorney featured in the movie played by Josh Gad. It was such a special moment for Lauren and I to meet, knowing that our dads had worked side-by-side arguing a case almost seventy years before, and we just thought how proud and happy they would be seeing the two of us together. And we remain close. I don’t say friends, because I call her my sister, and she calls me my brother. That’s how close we are. And that is when it all started there in Bridgeport.

Mike shared with me the screenplay, and said “Hey, when you get a chance, take a look at this and tell me what you think.” Appropriately, I read it on a train ride from D.C. to New York. I read it and never put it down. It was amazing. I told Mike that, and I don’t know how he moved things as fast as he did, but they were able to get the movie going and get it secured through Lauren Friedman’s good friend,
producer Paula Wagner. They got a good director Reggie Hudlin, who while they were filming, called me several days, either during filming or after filming, asking me what I thought about this or what I thought about that. How should we have my dad act in a certain part of it or what would he do.

Also, leading up to it, I had been told that they were looking to get Chadwick Boseman to play my dad. But Chadwick had some doubts, because he didn’t think he looked enough like my dad, and he didn’t think he would take the role. So the director and Mike asked if I could write a letter to Chadwick and ask him to take the role. Let me read you a quick excerpt from the letter that I wrote to Chadwick: “As you consider this opportunity, I want to offer my personal encouragement and heart-felt personal support to you to take on this role as my father. I have no doubt that you would capture my father’s voice, spirit, and soul accurately and beautifully. Ultimately, that is what is most important to the Marshall family.”

Thank goodness, Chadwick took the part, and it turned out to be a great movie. I hope many of you have seen it, but it was a movie about Joseph Spell, an African-American chauffeur played by Sterling K. Brown, accused of rape by his white employer, Eleanor Strubing, played by Kate Hudson. My dad was teamed up to argue the case, as I mentioned, with a white Jewish attorney by the name Sam Friedman, who was played by Josh Gad.

Like I said, it was so great to get to know the producer Paula Wagner, the director Reginald Hudlin, and to meet several of cast members, including Chadwick, Josh Gad, and Sterling K. Brown. We did several events leading up to the movie. We had a really nice dinner one night.

I can’t tell you the impact that, in the short time I knew Chadwick, the impact that he had on my life. What a shock it was when we all learned he had cancer, and passed away in 2020. He actually had that cancer when I got to know him and they were filming Marshall. Just an incredible man. Still
to this day, just so sad about his loss.

I will share one quick story with you about leading up to the movie. They had a special showing. I had seen it two or three times. But Mike Koskoff wanted to have a special showing for my mom here in the D.C. area. So we took her to this small theatre for her to see, was about 20 people, all invited people. As we rode over there, I said, “Mom, you know I have worked really hard on this along with Mike. I hope you like it. But if you have any issues, can we just talk about it on the way home. Please, please give me the benefit of the doubt here. I hope you will like the movie.” So, I sat with her, she watched the movie, and it was all quiet. And at the end, Mike got up and said a few words, and then asked my mom, “So, what did you think?” And I thought, “Oh No, oh no. My biggest critic.” And she said, “I have one comment.” I thought, “Here it comes.” “You know that Chadwick Boseman?” And Mike said, “Yes?” “He is an incredibly good-looking man. But, he is nowhere near as handsome as my husband was.” So, I sighed a sigh of relief, and thought we can all live with that. Like I said, so many great stories of being connected with that story.

One other story, at the premiere in Hollywood during the afterparty, this great big guy came up to me. For those of you have seen the movie, you probably remember him, his name is Robert Bates. I looked at him and said, “Where do I know you from?” He responded, “I am the guy that beat up your dad in the movie.” I said, “Oh!” He is like 6’4”, 260 pounds. I said, “You know what, if they hadn’t broken up that fight, in real life, I think my dad would have taken you!” And we both laughed. Lots of great stories having to do with that movie.

Let me just answer two more questions. One is how do I describe my dad’s role in our nation’s history. To answer that question, I always use a quote from his dear, dear friend and colleague on the Court, our nation’s first female Associate Justice on the Court, Sandra Day O’Connor. She said the following describing my dad: “His was the eye of a lawyer who saw the deepest wounds in the social fabric and used the
law to help heal them. His was the ear of a counselor who understood the vulnerabilities of the accused and established safeguards for their protection. His was the mouth of a man who knew the anguish of the silenced and gave them a voice. No one could avoid being touched by his soul.”

The final question that I will answer is what I think my dad would say were he here today. I think it would be the very words he spoke when he was awarded the Liberty Medal in Philadelphia in 1992. Words that would have rung true on the steps of the U.S. Supreme Court after Brown v. Board of Education. Words that would have rung true on the steps of the Bridgeport, Connecticut, courthouse after the Joseph Spell case. And words that still ring true thirty years later. He said the following: “The battle for racial and economic justice is not yet won. Indeed, it has barely begun. The legal system can force open doors and sometimes even knock down walls. But it cannot build bridges. That job belongs to you and me. Afro and White, rich and poor, educated and illiterate, our fates are bound together. We can run from each other but we cannot escape each other. We will only attain freedom if we learn to appreciate what is different and muster the courage to discover what is fundamentally the same. America’s diversity offers so much richness and opportunity. Take a chance, won’t you? Knock down the fences that divide. Tear apart the walls that imprison. Reach out, freedom lies just on the other side. We should have liberty for all.”

So, I now end this portion of the program, by saying thank you. And as I began, with those lyrics, remember to always stand up for something.