

# Thurgood Marshall Before the Court



## COMMITTEE COMMENTARY

Thurgood Marshall was the first African-American Justice on the U. S. Supreme Court, serving for 24 years until his retirement at the age of 83 in 1991. This outstanding 60-minute special report, produced by American RadioWorks, effectively tells the earlier story of "Thurgood Marshall Before the Court." It focuses on Marshall's nearly 30-year legal career prior to joining the Supreme Court in 1967, arguing *in front of courts* as leader of the NAACP Legal Defense and Educational Fund. Marshall was the lead plaintiff's attorney in *Brown v. Board of Education*. Less known, however, are the cases and events leading up to *Brown* and Marshall's role in the organized legal battle against Jim Crow. Beginning in the late 1930s under his mentor, Charles Hamilton Houston, Marshall made numerous court appearances, often at considerable personal risk, in the fight for civil rights. He faced uncooperative judges and law enforcement officials in hostile environments. This radio documentary conveys how his engaging storytelling and disarming presence served him well in these encounters. To tell this remarkable story, it uses Marshall's own words, some recorded by him and others dramatically re-enacted, along with evocative historical audio. It also features insightful commentary by Marshall's contemporaries and many leading civil rights scholars, including Randall Kennedy, Michael Klarman, and Richard Kluger. In producing this program and an especially rich companion website, American RadioWorks has provided us with an excellent resource about and tribute to one of our nation's greatest advocates for equal justice under law.

American RadioWorks/American Public Media | St. Paul, Minnesota  
Stephen Smith, *Executive Editor and Correspondent*  
Kate Ellis, *Associate Producer/Researcher*  
Deborah George, *Senior Editor*

## INTERVIEW with Kate Ellis

*Kate Ellis is a consulting producer to American RadioWorks, the documentary unit of American Public Media. She holds a PhD in anthropology from Columbia University and specializes in American race relations. She and Stephen Smith collaborated on every aspect of research and production for "Thurgood Marshall Before the Court." Stephen Smith is executive editor of American RadioWorks. He produces documentaries on a wide range of domestic and international issues, including American history.*

### How was the documentary produced? What led to its development?

This documentary grew out of an ongoing series of American RadioWorks projects on African-American history. Thurgood Marshall was an immensely influential and colorful person, but the first phase of his distinguished career has never gotten the attention it deserves. Too many people think the civil rights movement started in 1955 with Martin Luther King, Jr. and the Montgomery bus boycott. African Americans have, in fact, resisted discrimination since their arrival in America. By profiling Thurgood Marshall, we wanted to shed light on the crucial period that gave rise to the modern civil rights movement, the 30-year campaign to dismantle the legal framework of Jim Crow. As head of the NAACP's Legal Defense Fund from 1938 to 1961, Thurgood Marshall led the battle. Through in-depth research and interviews with scholars and people who had known and worked with Marshall, we tried to paint a vivid picture of what Marshall was like as a person and how he led an army of lawyers in the fight to overturn *Plessy v. Ferguson*.

### How do you think "Thurgood Marshall Before the Court" treats or offers insights or perspectives on legal issues or legal institutions?

People tend to know Thurgood Marshall as the first African American appointed to the Supreme Court. Few understand how he got there, nor what led to the historic 1954 *Brown v. Board of Education* ruling. For nearly two decades, the NAACP Legal Defense Fund built a road of legal decisions leading to *Brown*. Each separate court victory—against a Jim Crow train car or a segregated law school—was a paving stone on that road. In concentrating on this phase of Marshall's career, we tried to provide a rich assessment of Marshall's achievements and limitations as a civil rights lawyer and to convey the varied characters and social forces that led to the *Brown* decision and its aftermath.



Stephen Smith



Kate Ellis

### How does the documentary foster public understanding? What do you see as its public impact?

Nearly a million people heard "Thurgood Marshall Before the Court." Countless others became acquainted with him through the program's extensive website. Included in the program and the website are archival materials that had previously been tucked away in libraries and archives. They include recorded interviews with Thurgood Marshall dating back to the 1950s and a film shot by Marshall's mentor, Charles Houston, documenting impoverished black conditions in South Carolina in the 1930s. These resources are now available to a broad national audience.

### What does winning the Silver Gavel award from the ABA mean to you?

In the early part of his career, Thurgood Marshall could not join the segregated American Bar Association. The ABA has long since recognized the contributions that Marshall, and other black lawyers, made to the American legal system and to American history. Fifty years after *Brown*, it is gratifying and appropriate for the ABA to recognize this towering figure in American legal history by, among other activities, awarding this radio program a Silver Gavel. On a personal level, it is a tremendous honor to have a project that meant so much to us recognized by this important award.

*Listen to the documentary or read the transcript by going online to <http://americanradioworks.publicradio.org/features/marshall/>. This companion site also includes a timeline, resources and related links.*

**NARRATOR:** 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.

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

**LAW PROFESSOR DAVID WILKINS:** He was unyielding on these students learning how to do it exactly right. 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.

**NARRATOR:** 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.

**NARRATOR:** 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.

**LAW PROFESSOR LARRY GIBSON:** 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.

**NARRATOR:** 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.



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

**NARRATOR:** 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 prosecutor's 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. 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.

**LAW PROFESSOR MICHAEL 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.

**NARRATOR:** 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.

**NARRATOR:** Although the appeal eventually failed, the Lyons case was not a total loss. Law professor Michael 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 disenfranchisement and segregation. It's one thing to segregate someone, it's something else to essentially lynch them.

**NARRATOR:** 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."

**HISTORIAN JOHN HOPE FRANKLIN:** Marshall appreciated as few of us did that this was a crossroads of history and that this was his time.