

Thurgood Marshall in the Supreme Court

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October 2, 2007, marked the 40th anniversary of Thurgood Marshall taking his seat as an Associate Justice of the Supreme Court of the United States.¹ His appointment by President Lyndon Johnson and the United States Senate made Justice Marshall the first African-American to serve on the Court.

Justice Marshall served on the Supreme Court from 1967 until he assumed senior status in 1991, and he was a federal judge until his death in 1993. He previously served in government as Solicitor General of the United States (1965-67) and as a Judge of the United States Court of Appeals for the Second Circuit (1961-65).

Thurgood Marshall was, before that, of course, Director Counsel of the NAACP Legal Defense and Educational Fund, Inc. (1940-61). He led its litigation against official segregation and racial discrimination across the United States and, in particular and with enormous success, its litigation in the Supreme Court.

Justice Robert H. Jackson died thirteen years before Justice Marshall joined the Court, but they knew and admired each other. In December 1953, for example, after Thurgood Marshall and colleagues had reargued *Brown v. Board of Education* and its companion cases to the Court—the cases had first been argued a year earlier, then put over by the Court for additional briefing and reargument—Justice Jackson burst into his colleague Justice Felix Frankfurter’s chambers and blurted out, about Marshall, “Wasn’t that colored fellow magnificent! He simply creamed John W. Davis.”² Mr. Davis was the American bar leader and venerable

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For a selected archive of Jackson List postings, see my homepage at www.law.stjohns.edu. To subscribe to the Jackson List, send a note to barrettj@stjohns.edu.

¹ See generally Joe Burris, *One Supreme Day*, BALT. SUN, Oct. 2, 2007, available at www.baltimoresun.com/entertainment/bal-to_marshall02oct02_0.2230782.story, which includes oral history accounts of Justice Marshall taking the Supreme Court bench.

² See LEONARD W. LEVY, *RANTERS RUN AMOK & OTHER ADVENTURES IN THE HISTORY OF LAW* 61 (Chicago: Ivan R. Dee, 2000).

Supreme Court advocate who defended South Carolina's system of racially segregated schools.

A direct and notable Marshall-Jackson exchange had occurred a year earlier, during the initial oral argument in *Briggs v. Elliott*, the South Carolina case. Justice Jackson asked advocate Marshall whether the NAACP's argument against racial segregation would affect "the Indian policy, the segregation of the Indians?" Marshall replied that he thought it would, but that American Indians had not "had the judgment or the wherewithal to bring lawsuits." Jackson then suggested, "Maybe you should bring some up," to which Marshall replied orally, "I have a full load now, Mr. Justice."³

Marshall also, during this bantering and encouraging exchange, replied to Jackson physically. Knowing that Jackson was a fellow Mason, Marshall used his hand to flash a secret Masonic distress signal. He then, with pleasure and relief, saw Jackson spot and, with his own hand, return the sign.⁴

³ Transcript of Oral Argument in *Briggs v. Elliott*, No. 101 (Dec. 9, 1952), reprinted in PHILIP B. KURLAND & GERHARD CASPER, EDS., 49 LANDMARK BRIEFS & ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES: CONSTITUTIONAL LAW 307, 324.

⁴ See JACK GREENBURG, CRUSADERS IN THE COURTS: LEGAL BATTLES OF THE CIVIL RIGHTS MOVEMENT 181 (New York: Twelve Tables Press, 2004 anniv. ed.).