THE LAWYER AND THE JUDGE

By Tom Hanchett, Levine Museum of the New South

May 17, 2014 marked the 60th anniversary of the landmark Supreme Court decision that banned racial segregation.

Thurgood Marshall was a fiery black lawyer from New York City, the top Civil Rights crusader for the NAACP Legal Defense Fund. Judge J. Waties Waring was a solemn old-line Charlestonian, raised amid luxury in the segregated South. But in 1951 these two men joined together to shape a court case that changed the South – and the nation -- forever.

Thurgood Marshall trained as a law student at prestigious black Howard University in Washington DC. He studied under Charles Hamilton Houston, dean of the law school, a warrior against racial inequality.

In 1896, the Supreme Court ruled in *Plessy v Ferguson* that segregation was legal – as long as things were "separate but equal." The white leaders implemented "separate" with gusto; separate water fountains, separate train cars and waiting rooms, separate eating places, and separate schools. But they never seemed to get around to "equal." Even without the "white" and "colored" signs, nobody had any trouble knowing which was which.

Marshall made it his life work to chip away at that inequality. First he pushed the South to uphold the "equal" part of "separate but equal." He filed a series of suits against colleges and got the Court to rule that, if a state barred blacks from its white colleges, it must build a completely equal facility.

Marshall itched to tackle segregation head-on. "Negroes have been fighting for equality in separate schools for more than 80 years and have not attained a semblance of equality," he thundered at the 1947 annual NAACP conference; "[It] is impossible, to have equality in a segregated system." The Supreme Court must be persuaded to overturn *Plessy v Ferguson*.

Clarendon County, South Carolina, a scrap of rural farmland situated halfway between Charleston and Columbia, would be the place he'd take that stand, but at first things didn't seem that way. Rev. J. A. De Laine, a country preacher in Clarendon, approached Marshall through South Carolina's NAACP chapter in 1950. De Laine's neighbors had tried unsuccessfully to get bus transportation so their children would not have to walk to school. Turned down for that modest request, they now wanted to sue for completely equal school facilities. Would Marshall take the case?

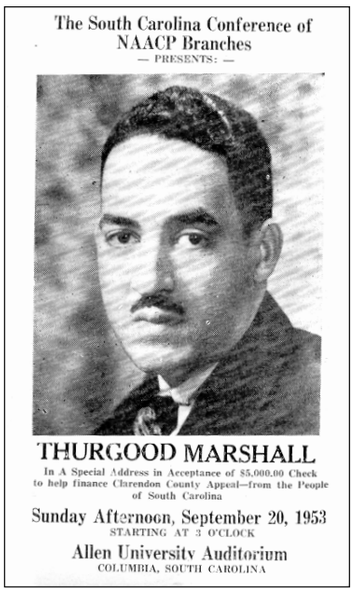
Thurgood Marshall hemmed and hawed, complaining that Clarendon was so poor and isolated, making a high-profile lawsuit difficult to mount. But at last he agreed and drew up a petition demanding "educational advantages and facilities equal in all respects to that which is being provided for whites." One hundred seven men, women and children signed their names, often with shaky hands more accustomed to the plow than the pen.

Then came the dramatic turn of events.

The federal judge who would hear Marshall's lawsuit was J. Waties Waring, down in Charleston. At first glance, Waring seemed the very symbol of Southern inequality. Raised among the city's "first families," he had come of age without questioning his privileges. "White supremacy is a way of life," he later mused. "You grow up in it and the moss gets in your eyes. You learn to rationalize away the evil and filth and you see magnolias instead."

When Waring became a judge, however, he began to realize that all people were not treated equally in the eyes of his beloved law. He integrated his courtroom and hired an African America bailiff. In a case demanding equal pay for South Carolina's black teachers, Judge Waring ruled in favor of the black teachers. When another case sought the end of South Carolina's notorious whites-only primary election system, Judge Waring said "yes."

Now this remarkable Judge turned his attention to the Clarendon schools lawsuit.



Courtesy of Levine Museum of the New South

Be bold, Waring urged after reading Marshall's initial draft; attack Plessy directly. "[B]ring a brand new suit … raise the issue for all time as to whether a state can segregate by race in its schools."

And Thurgood Marshall did. He re-filed the lawsuit, this time demanding not equal facilities, but the total end of segregated education.

Marshall took the case all the way to the US Supreme Court. Joined by others from Delaware, Virginia, the District of Columbia, and Kansas under the name *Brown v Board of Education of Topeka*, it was decided on May 17, 1954.

"In the field of public education, the doctrine of 'separate but equal" has no place," declared the Court. "Separate educational facilities are inherently unequal." From those words would spring the Civil Rights Movement of the 1950's and 1960's.

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Based on the traveling exhibition Courage: *The Vision to End Segregation, the Guts to Fight for It*, created by Levine Museum of the New South, Charlotte, N.C. www.museumofthenewsouth.org

Draw conclusions: Thurgood Marshall and J. Waties Waring worked together and made a difference. What character traits best describe each man? What do they have in common? Identify people in the news who exhibit the same or similar qualities.