

LESSONS FROM ICONIC LEADERS: THURGOOD MARSHALL AND NELSON MANDELA

*Deborah L. Rhode**

I. INTRODUCTION

The role of leaders in social movements is complex and contested. That is particularly true for social justice activism, where the need to empower subordinate groups and build leadership from the bottom up is especially critical. Yet the success of that process often turns partly on the capacity of some singular individual to promote and exemplify the values of the movement. Cross-cultural research documents what common experience suggests: similar public policy initiatives in similar circumstances have different outcomes depending on leaders' skills and strategies.¹

This Article profiles two lawyers whose leadership made a crucial contribution to social justice: Thurgood Marshall and Nelson Mandela.² The discussion begins with biography and explores how Marshall and then Mandela rose to leadership and the contributions they made.³ The Article concludes by drawing some broader lessons about the qualities underlying their effectiveness: integrity, courage, sacrifice, judgment, commitment, empathy, emotional intelligence, and humility.⁴ Those qualities offer an important counterweight to the narcissism, egoism, and self-interest that is increasingly on display among contemporary global leaders.⁵ Marshall and Mandela let their greatness speak for itself. At the

* Ernest W. McFarland Professor of Law, Director, Center on the Legal Profession, Stanford University. This Article is adapted from DEBORAH L. RHODE, CHARACTER: WHAT IT MEANS AND WHY IT MATTERS 175-96 (2019).

1. JOE WALLIS & BRIAN DOLLERY, MARKET FAILURE, GOVERNMENT FAILURE, LEADERSHIP AND PUBLIC POLICY 119 (1999).

2. *See infra* Parts II, III.

3. *See infra* Parts II, III.

4. *See infra* Part IV.

5. For a discussion of Donald Trump's egoistic and self-serving leadership, see DEBORAH L. RHODE, CHARACTER: WHAT IT MEANS AND WHY IT MATTERS 111-14, 121-22, 124-26, 132-36 (2019).

end of his life, Mandela famously claimed that credit for the new South Africa belonged only to the African National Congress, “I don’t think there is much history can say about me,” he insisted, “I just want to be remembered as part of that collective.”⁶ He was wrong about history. This Article suggests why and what we can learn from his and Marshall’s example.

II. THURGOOD MARSHALL

A. *Biographical Background*

Thurgood Marshall was born in 1908 in segregated Baltimore, a world of rampant racism.⁷ Blacks there could not attend the same schools, ride the same trains, or use the same drinking fountains as whites.⁸ The club where Marshall worked to earn money for college had a sign that read: “No Niggers or Dogs Allowed.”⁹ His mother dreamed that he would become a dentist, which promised a secure livelihood in a city where almost no professional occupations were available to blacks.¹⁰

Marshall himself had other aspirations. After graduating from a small all-black college, he decided to become a lawyer.¹¹ Because the University of Maryland Law School wouldn’t admit blacks, he enrolled at Howard University in Washington, D.C.¹² In an era before student loans, Marshall got part-time jobs as a waiter, bellhop, delivery boy, and assistant in the law school library.¹³ This part-time work, together with his course load and commute from his parent’s home in Baltimore, made for a brutal schedule. He was up at five and did not finish studying until midnight.¹⁴ He still managed to graduate first in his class.¹⁵ His performance attracted the notice of a professor, William Hastie, and the

6. *Id.* at 195 (citation omitted).

7. *Id.* at 175.

8. *Id.*

9. JUAN WILLIAMS, THURGOOD MARSHALL: AMERICAN REVOLUTIONARY 44 (1998).

10. MICHAEL D. DAVIS & HUNTER R. CLARK, THURGOOD MARSHALL: WARRIOR AT THE BAR, REBEL ON THE BENCH 39 (updated & rev. ed. 1994); RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA’S STRUGGLE FOR EQUALITY 177 (2nd prtg. 1980).

11. RHODE, *supra* note 5, at 176.

12. *Id.*

13. HOWARD BALL, A DEFIANT LIFE: THURGOOD MARSHALL AND THE PERSISTENCE OF RACISM IN AMERICA 45 (1998); WILLIAMS, *supra* note 9, at 56.

14. DAVIS & CLARK, *supra* note 10, at 48; KLUGER, *supra* note 10, at 180; WILLIAMS, *supra* note 9, at 53, 56.

15. *Thurgood Marshall*, HISTORY (Oct. 29, 2009), <https://www.history.com/topics/black-history/thurgood-marshall>.

dean, Charles Houston, who both tapped Marshall to work on civil rights cases.¹⁶

His commitment to that work persisted, but it was hard to reconcile with the financial realities of legal practice. Marshall hung out his shingle in 1933, in the midst of the Depression.¹⁷ No Baltimore firms would hire blacks, few landlords were willing to rent them office space, and few clients—black or white—wanted to trust their cases to a black attorney.¹⁸ Marshall struggled to make a living, while also working as legal counsel for the Baltimore branch of the National Association for the Advancement of Colored People (“NAACP”).¹⁹ His first victory held special personal as well as professional significance: he successfully sued the University of Maryland Law School, which had excluded him and others, for failure to provide the “separate but equal” educational opportunity that Supreme Court precedents demanded.²⁰ He also lobbied for an anti-lynching bill, challenged pay discrimination, and assisted a boycott of businesses that sold to black customers but would not hire black employees.²¹ This work, however satisfying, did not pay the rent and Marshall’s secretary later joked that he “had a genius for ignoring cases that might earn him some money.”²²

The NAACP eventually solved that problem by making him, at age thirty, its legal director and then spinning off the legal wing into a separate tax-exempt organization, the NAACP Legal Defense and Education Fund, Inc. (“NAACP Inc. Fund”).²³ Under his leadership, it became the model for public interest law firms generally.²⁴ Its own practices also exemplified the principles he was fighting for. In the 1940s, a time when few legal workplaces would hire female lawyers, Marshall was the

16. BALL, *supra* note 13, at 47.

17. RHODE, *supra* note 5, at 176.

18. KLUGER, *supra* note 10, at 182; WILLIAMS, *supra* note 9, at 62; CHARLES L. ZELDEN, THURGOOD MARSHALL: RACE, RIGHTS, AND THE STRUGGLE FOR A MORE PERFECT UNION 25 (2013).

19. RHODE, *supra* note 5, at 176.

20. RANDALL W. BLAND, PRIVATE PRESSURE ON PUBLIC LAW: THE LEGAL CAREER OF JUSTICE THURGOOD MARSHALL 10 (1973); DAVIS & CLARK, *supra* note 10, at 83-84, 87, 89; ZELDEN, *supra* note 18, at 29.

21. DAVIS & CLARK, *supra* note 10, at 76.

22. ZELDEN, *supra* note 18, at 27.

23. *Id.* at 38-39.

24. See Linda Greenhouse, *Thurgood Marshall, Civil Rights Hero, Dies at 84*, N.Y. TIMES, Jan. 25, 1993, at A1, <https://www.nytimes.com/1993/01/25/us/thurgood-marshall-civil-rights-hero-dies-at-84.html>.

exception, which earned him the reputation as one of the country's "first feminists."²⁵

Over the next quarter-century, Marshall crisscrossed the country, establishing a network of lawyers willing to challenge racial injustice.²⁶ It was a difficult and dangerous life. He was on the road six to nine months every year, traveling an average of fifty thousand miles annually before jet planes or the interstate highway system.²⁷ In preparing for trial with little staff assistance, Marshall frequently worked sixteen-hour days.²⁸ His cases led him into segregated regions with few restaurants or hotels that would serve blacks.²⁹ He picked his battles carefully, and put up with personal abuse and indignities because, as he said, "I'm down here representing a client—the NAACP—and not myself."³⁰ On the road, he stayed with local residents, typically moving every night, sometimes every few hours, to evade hostile whites.³¹

On more than one occasion, he narrowly escaped lynching and was often protected by armed black volunteers.³² Police were sometimes part of the problem rather than the solution.³³ In one instance, after being arrested on the pretext of drunk driving and told to walk unaccompanied into a local magistrates office, Marshall prudently refused and told the officers, "You aren't going to shoot me in the back while I'm 'escaping.'"³⁴ Hostility came even from those who were in theory "officers of the court."³⁵ In one school desegregation case, the attorney for the state warned Marshall that "[i]f you ever show your black ass in Clarendon County again you'll be dead."³⁶

Marshall's extraordinary courage and commitment helped change the landscape of American race relations. He successfully argued cases challenging discrimination in schools, housing, voting, public transportation, jury selection, and police conduct.³⁷ Marshall often faced

25. GILBERT KING, *DEVIL IN THE GROVE* 46-47 (2012).

26. DAVIS & CLARK, *supra* note 10, at 103; KING, *supra* note 25, at 47.

27. KING, *supra* note 25, at 47. Other sources estimate that Marshall traveled upwards of sixty thousand miles every year. DAVIS & CLARK, *supra* note 10, at 21; *see* ZELDEN, *supra* note 18, at 39 (stating that Marshall averaged five thousand miles a month).

28. BALL, *supra* note 13, at 71.

29. ZELDEN, *supra* note 18, at 39; Mark Tushnet, *Lawyer Thurgood Marshall*, 44 STAN. L. REV. 1277, 1281 (1992).

30. WILLIAMS, *supra* note 9, at 163 (quoting Marshall).

31. *See id.* at 106; *see also* RHODE, *supra* note 5, at 177 (citation omitted).

32. KING, *supra* note 25, at 5, 20; WILLIAMS, *supra* note 9, at 127, 141.

33. *See* WILLIAMS, *supra* note 9, at 104.

34. BLAND, *supra* note 20, at 40; KLUGER, *supra* note 10, at 225.

35. *See* WILLIAMS, *supra* note 9, at 203.

36. *Id.*; *see* KLUGER, *supra* note 10, at 534.

37. *See* BALL, *supra* note 13, at 72-85; BLAND, *supra* note 20, at 37-42, 47, 59-60.

off against adversaries with vastly more resources, and the ability to exhaust plaintiffs literally and financially for extended intervals.³⁸ One Alabama lawsuit involving discrimination in teacher salaries took nine years to resolve, partly because the school board retaliated against plaintiffs by not renewing their contracts, which forced Marshall to keep finding new clients.³⁹

B. Segregation Battles

During the late 1940s and early 1950s, school segregation cases became an increasingly central part of the NAACP Inc. Fund's work.⁴⁰ During Marshall's early years as director, his strategy was to target the concept of "separate but equal" facilities in graduate and professional schools on the theory that states could not show that black institutions offered comparable education in terms of reputation and facilities and that it would be prohibitively expensive for them to try.⁴¹ In 1944, seventeen Southern states had no institutions that would admit black Ph.D. candidates and had only two schools that were open to black medical and law students.⁴² Some states offered racially segregated institutions that they ludicrously claimed were equal.⁴³ The University of Texas provided black students a basement room with a few boxes of books, which it presented as comparable to the University of Texas School of Law.⁴⁴

The resistance to desegregation was substantial, and even when the NAACP won in court, it faced defiance in enforcement. For example, after the Supreme Court required Oklahoma to provide equal access to legal education to black applicants, the Board of Regents responded by designating a roped-off area in the state capital as a makeshift law school and assigning three teachers to instruct the female plaintiff.⁴⁵ When Marshall objected, Oklahoma's law school admitted the plaintiff but required her to sit in the back of the class behind a wooden bar in a chair with a sign marked "COLORED."⁴⁶ After the NAACP continued to challenge such discriminatory treatment, the Supreme Court finally found it unconstitutional, but declined to revisit *Plessy v. Ferguson*'s doctrine of

38. See BALL, *supra* note 13, at 77.

39. *Id.*

40. See BLAND, *supra* note 20, at 37; see, e.g., *Brown v. Bd. of Educ. of Topeka*, 349 U.S. 294, 301 (1955); *Sipuel v. Bd. of Regents of Univ. of Okla.*, 332 U.S. 631-33 (1948).

41. BLAND, *supra* note 20, at 60-61.

42. BALL, *supra* note 13, at 73; see KLUGER, *supra* note 10, at 257.

43. RHODE, *supra* note 5, at 179.

44. KING, *supra* note 25, at 186. The National Association for the Advancement of Colored People ("NAACP") brought a successful challenge in *Sweatt v. Painter*, 339 U.S. 629 (1950).

45. BLAND, *supra* note 20, at 61; KLUGER, *supra* note 10, at 259; see *Sipuel*, 332 U.S. at 633.

46. BALL, *supra* note 13, at 74.

separate but equal.⁴⁷ Chief Justice Vinson, who wrote the opinion in the Oklahoma case, told a colleague that he did not want anything in the decision that would “stir up feelings of anger and resentment in any portion of the country.”⁴⁸

Frustrated by the expense and delay of demonstrating that segregated institutions were in fact unequal on a case-by-case basis, Marshall in 1947 persuaded the NAACP Inc. Fund board to declare that the organization would now only pursue claims that segregation was inherently unequal.⁴⁹ It was a controversial decision. Many in the civil rights community feared that the Court was not ready to overturn *Plessy* and that a decision reaffirming separate but equal would set the movement back.⁵⁰ As Yale Law School professor John Frank put it, “A judge cannot be blamed if he shrinks from precipitating a race riot.”⁵¹ Commenting on the difficulties of reconciling factions within the civil rights movement, Marshall would sometimes tell his staff members that “the easy part of the job is fighting the white folks!”⁵²

Concerns about the Court’s inclinations were well-founded, but Marshall laid careful groundwork for a frontal challenge on segregation. The litigation that ultimately reached the Supreme Court in *Brown v. Board of Education* involved five consolidated cases coming from Kansas, South Carolina, Virginia, Delaware, and Washington, D.C.⁵³ Coordinating that litigation was a marathon effort. Among Marshall’s accomplishments was an appendix to the *Brown* brief with a statement from thirty-two of the nation’s most eminent experts in race relations who attested to the social and psychological damage of segregation.⁵⁴ After the initial argument in *Brown* in 1953, the Court was sharply divided, and rather than deliver a splintered opinion, it set the cases for reargument.⁵⁵ The Justices asked for additional briefing on several questions, including the history of the Fourteenth Amendment and strategies for implementing a desegregation order.⁵⁶ While the case was pending, Chief Justice Vinson died, and his replacement was former California governor Earl Warren.⁵⁷

47. See *id.* at 74-75; see also *McLauren v. Okla. State Regents for Higher Educ.*, 339 U.S. 637, 638, 642 (1950).

48. BALL, *supra* note 13, at 75.

49. *Id.* at 93; see ZELDEN, *supra* note 18, at 98.

50. ZELDEN, *supra* note 18, at 68.

51. KLUGER, *supra* note 10, at 535.

52. BALL, *supra* note 13, at 93.

53. 347 U.S. 483 (1954); ZELDEN, *supra* note 18, at 72-73, 77.

54. ZELDEN, *supra* note 18, at 78.

55. *Id.* at 79.

56. *Id.*

57. *Id.* at 79-80.

That shift in leadership proved decisive. Unlike his predecessor, Warren was a supporter of integration.⁵⁸ He was also a master politician, capable of forging consensus. Marshall took advantage of the opportunity to strengthen the case against segregation. He quickly put out a desperate appeal for funds and assembled a team of two hundred experts to help prepare the brief.⁵⁹ Work conditions were challenging. Everyone was on sweatshop schedules in a cramped and uncomfortable office space.⁶⁰ Historian John Hope Franklin recalled, “I have *never* seen a man work so long and so hard [as Marshall]. It was nothing for him to say at 1:00 A.M., ‘How about a fifteen-minute break?’”⁶¹ Other colleagues noted Marshall’s exceptional capacity to inspire others, reduce friction, and exercise sound strategic judgment.⁶² It all paid off.

In 1954, the Court issued a unanimous opinion finding segregated schools unconstitutional.⁶³ Marshall was elated, although not unmindful of the challenges remaining.⁶⁴ At a victory party following the decision, he cautioned staff, “[D]on’t any of you fool yourselves, it’s just begun, the fight has just begun.”⁶⁵ Still, in a rare miscalculation, Marshall dramatically underestimated the likely resistance. He predicted in a *New York Times* interview that by the hundredth anniversary of the Emancipation Proclamation in 1963, all forms of segregation would be eliminated.⁶⁶ “I’m in a hurry,” Marshall told one reporter. “I want to put myself out of business.”⁶⁷ The Justices, however, had a different timetable, informed by a more realistic assessment of the resistance that their decision was likely to provoke. They scheduled further argument on the remedy, and then issued a judgment that was not what Marshall had hoped for.⁶⁸ Rather than set a date for compliance, the Justices remanded the cases to the trial courts with instruction to ensure desegregation with “all deliberate speed.”⁶⁹

Southern officials reinterpreted “all deliberate speed” as “any conceivable delay.”⁷⁰ The courts became embroiled in desegregation disputes over not just schools, but all aspects of public life, including

58. *Id.* at 80; see RHODE, *supra* note 5, at 180.

59. RHODE, *supra* note 5, at 180.

60. See KLUGER, *supra* note 10, at 618.

61. DAVIS & CLARK, *supra* note 10, at 23; KLUGER, *supra* note 10, at 636.

62. KLUGER, *supra* note 10, at 642-43.

63. See *Brown v. Bd. of Edu. of Topeka*, 347 U.S. 483, 483, 493-95 (1954).

64. RHODE, *supra* note 5, at 180.

65. ZELDEN, *supra* note 18, at 86.

66. KLUGER, *supra* note 10, at 714.

67. WILLIAMS, *supra* note 9, at 231.

68. RHODE, *supra* note 5, at 180.

69. *Brown v. Bd. of Educ. of Topeka*, 349 U.S. 294, 301 (1955).

70. KLUGER, *supra* note 10, at 752-53.

parks, hospitals, transportation, and recreational facilities.⁷¹ When they lost in the courts, opponents of desegregation took to the streets, the legislature, and the courts in order to reduce the impact of desegregation.⁷² In some states, they sought to ban the NAACP entirely, and one such effort dragged on in legal proceedings for eight years.⁷³ Other jurisdictions passed statutes subsidizing private schools, repealing compulsory school attendance laws, and withdrawing funds from districts that tried to implement desegregation plans.⁷⁴ In 1954, the White Citizens' Councils formed to coordinate economic reprisals (such as denial of jobs, credit, and insurance) against any blacks who worked with civil rights groups, and if those strategies were not effective, the Councils often turned to violence and terror.⁷⁵

By the close of the decade, Marshall had successfully argued seven more cases before the Supreme Court involving resistance to desegregation.⁷⁶ The most notorious involved schools in Little Rock, Arkansas, where defiance from the governor and riots by white residents in response to the school board's desegregation plan finally forced President Eisenhower to send in a thousand troops.⁷⁷ For the rest of the school year, the troops escorted nine brave black children to and from school every day, where they experienced constant harassment and abuse.⁷⁸ Marshall himself had armed guards as he challenged the school board's attempt to delay integration in court.⁷⁹

Massive resistance to integration overwhelmed Marshall and his understaffed office. "[Y]ou can't take a breather," he noted, "If you do, the other guy will run you ragged."⁸⁰ The pace worsened as civil rights activists mounted protests of their own. Martin Luther King Jr., the Southern Christian Leadership Council, and the Student Non-Violent Coordinating Committee launched a series of boycotts, sit-ins, marches, and related activities.⁸¹ Marshall disagreed with civil disobedience that violated the law in the course of challenging it. In his view, such defiance was "dangerous to the country."⁸² In a well-publicized speech that

71. BALL, *supra* note 13, at 147; KLUGER, *supra* note 10, at 750-51.

72. See BALL, *supra* note 13, at 143-47.

73. See ZELDEN, *supra* note 18, at 101-03.

74. BALL, *supra* note 13, at 142.

75. *Id.* at 143-44; DAVIS & CLARK, *supra* note 10, at 185.

76. DAVIS & CLARK, *supra* note 10, at 197.

77. See ZELDEN, *supra* note 18, at 104-05.

78. *Id.* at 105.

79. WILLIAMS, *supra* note 9, at 263-64.

80. BALL, *supra* note 13, at 150.

81. BALL, *supra* note 13, at 209; DAVIS & CLARK, *supra* note 10, at 214.

82. See Robert Post, *Marshall as a Judge*, 88 *FORDHAM L. REV.* 1, 4 (2019).

infuriated protestors, Marshall explained, “I am a man of law, and in my book, anarchy is anarchy is anarchy. It makes no difference who practices anarchy. It’s bad, and punishable and should be punished.”⁸³ He told one of King’s aides that the NAACP’s job was “to get people out of jail, not get them in.”⁸⁴

Protestors who provoked their own arrests severely taxed the resources of the organization, which they expected to provide legal representation as well as to pay fines and legal expenses. From Marshall’s vantage, King was “great, as a leader,” but “as an organizer [he] wasn’t worth didley squat . . . All he did was to dump all his legal work on us, including the bills.”⁸⁵ Marshall may also have found it galling to see King receive credit for NAACP Inc. Fund achievements. When the Supreme Court announced its ruling in favor of the NAACP in the Little Rock school desegregation case, a black cab driver turned to Marshall and asked, “Did you see what Martin Luther King did for us today?”⁸⁶ Still, Marshall put aside his personal reservations and came to the defense of protesters. His last legal argument before the Supreme Court was on behalf of students who had launched a sit-in at a segregated Louisiana restaurant and marked Marshall’s thirty-sixth victory in that forum.⁸⁷

The rising militancy within the black community also took a personal toll. Black Muslims denounced Marshall as a “white nigger”⁸⁸ and “half white son of a bitch”⁸⁹; their threats of violence once led the New York Police department to post an armed officer outside his apartment.⁹⁰ In one confrontation, when a black activist told Marshall, “You are nothing but a tool of the Establishment,” Marshall shot back, “Brother, I *am* the Establishment!”⁹¹

C. Leadership from the Bench

By the early 1960s, Marshall was ready for a change. As he put it, “I’ve always felt the assault troops [should] never occupy the town. I figured after the school decisions, the assault was over for me. [I]t was

83. WILLIAMS, *supra* note 9, at 344; see BALL, *supra* note 13, at 209.

84. DAVIS & CLARK, *supra* note 10, at 214.

85. ZELDEN, *supra* note 18, at 119.

86. Mark V. Tushnet, *The Meritocratic Egalitarianism of Thurgood Marshall*, 52 HOW. L.J. 691, 706-07 (2009).

87. BALL, *supra* note 13, at 174. The case was *Garner v. Louisiana*, 368 U.S. 157 (1961).

88. WILLIAMS, *supra* note 9, at 275-76.

89. DAVIS & CLARK, *supra* note 10, at 249.

90. WILLIAMS, *supra* note 9, at 276-78.

91. Rebecca Brown, *Deep and Wide: Justice Marshall’s Contribution to Constitutional Law*, 52 HOW. L.J. 637, 638 (2009).

time to let newer minds take over.”⁹² He also wanted more time with his family. His first wife had died of lung cancer just after the *Brown* decision and Marshall had remarried.⁹³ He now had two young sons and no desire for a grueling travel schedule that would prevent spending time with them.⁹⁴ When President Kennedy offered to appoint him to the bench, Marshall seized the opportunity. However, Kennedy initially offered only a district court position, and Marshall felt that he had “too short a fuse to be a trial judge.”⁹⁵ When told that it was that or nothing, Marshall opted for nothing.⁹⁶ Kennedy relented and after a bruising confirmation battle, Marshall became the second African American to sit on a federal court of appeals.⁹⁷ His characteristic sense of humor was on display shortly after the appointment, when the judges convened to take a new picture with Marshall among them. The photographer blew a fuse and everyone was mingling in the dark when Marshall arrived for the photograph. The Chief Judge’s secretary, who did not recognize him, announced with evident relief, “thank God, the electrician’s arrived.”⁹⁸ To which Marshall reportedly responded, “Ma’am, you’d have to be crazy to think they’d let me in that union.”⁹⁹

The transition to life as an appellate judge was difficult. Marshall missed the solidarity, celebrity, and personal interaction of his former work.¹⁰⁰ He couldn’t even socialize with former colleagues because that might prevent him from hearing appeals of their civil rights cases.¹⁰¹ As one biographer put it, Marshall found it “hard to be alone sorting out minutia of the law,” particularly in commercial fields in which he had no background or interest.¹⁰² He did, however, finally have enough time for family. As his former law clerk Owen Fiss recalled, “Marshall was the only judge on the Second Circuit who drove his children to and from school each and every day—and enjoyed it.”¹⁰³

Despite the challenges, Marshall applied himself to his work and compiled a sufficiently impressive record that in 1965, President Lyndon

92. DAVIS & CLARK, *supra* note 10, at 235; RHODE, *supra* note 5, at 182.

93. RHODE, *supra* note 5, at 182.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 183.

99. *Id.* at 182-83; Deborah L. Rhode, *Letting the Law Catch Up*, 44 STAN. L. REV. 1259, 1265 (1992). For similar versions of this story, see WILLIAMS, *supra* note 9, at 304; ZELDEN, *supra* note 18, at 133; Ralph K. Winter, *TM’s Legacy*, 101 YALE L.J. 25, 29 (1991).

100. See ZELDEN, *supra* note 18, at 132-33.

101. *Id.* at 133.

102. RHODE, *supra* note 5, at 183; see also ZELDEN, *supra* note 18, at 133.

103. OWEN FISS, *PILLARS OF JUSTICE: LAWYERS AND THE LIBERAL TRADITION* 27 (2017).

B. Johnson offered him the position of Solicitor General. That position was part of a plan to prepare Marshall for appointment as the first black Justice of the Supreme Court.¹⁰⁴ According to one of his closest advisors, Johnson explained that he was making Marshall Solicitor General so that “when somebody says, ‘He doesn’t have a lot of experience for the Supreme Court,’ by God that son of a bitch will have prosecuted more cases before the Supreme Court than any lawyer in America. So how’s anybody gonna turn him down?”¹⁰⁵ When a vacancy arose, Marshall’s record spoke for itself. He had argued forty-one cases before the Supreme Court and won thirty-six.¹⁰⁶ Nonetheless, the hearings on Marshall’s confirmation were so ugly that *Time* magazine labeled them as “hazing.”¹⁰⁷

Marshall served twenty-four years on the Supreme Court.¹⁰⁸ Shortly after his arrival in 1967, its ideological composition began to shift. President Richard Nixon made four conservative appointments, including Chief Justice Warren Burger, and Marshall found himself in the minority on most issues that he cared about.¹⁰⁹ By the time of his retirement, he was known as the “Great Dissenter”; he had written over 1800 dissents, more than any of his colleagues.¹¹⁰ He was also a great listener. As was true during his years as an advocate, he took care as a Justice to understand and engage with his opponents’ arguments.¹¹¹ But he never lost sight of the unique perspective that he brought to the Court. As Yale law professor Paul Gewirtz noted, Marshall knew what it felt like to be “at risk” in the world and “he knew the difference law could make in all those places.”¹¹² Marshall believed that judges should not “close their eyes to . . . social realit[ies].”¹¹³ In his view, law should be a vehicle for social justice, and

104. RHODE, *supra* note 5, at 183.

105. CARL T. ROWAN, *DREAM MAKERS, DREAM BREAKERS: THE WORLD OF JUSTICE THURGOOD MARSHALL* 287-88 (1993).

106. BLAND, *supra* note 20, at 23 (clarifying that if those cases that were handed down jointly under one title are included, the success rate was forty-six out of fifty-one); *cf.* Andrew Rosenthal, *Marshall Retires from High Court; Blow to Liberals*, N.Y. TIMES, June 28, 1991, at A1, <https://www.nytimes.com/1991/06/28/us/marshall-retires-from-high-court-blow-to-liberals.html> (indicating that the success rate was twenty-nine out of thirty-two).

107. *Kite Flying & Other Games*, TIME, July 28, 1967, at 16; *see also* BALL, *supra* note 13, at 196.

108. RHODE, *supra* note 5, at 184.

109. BALL, *supra* note 13, at 200-01.

110. DAVIS & CLARK, *supra* note 10, at 373; FISS, *supra* note 103, at 25.

111. RHODE, *supra* note 5, at 184.

112. Paul Gewirtz, *Thurgood Marshall*, in *THURGOOD MARSHALL: JUSTICE FOR ALL* 167, 169 (Roger Goldman & David Gallen eds., 1992).

113. *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 558 (1989) (Marshall, J., dissenting).

he reminded his colleagues when their decisions fell short.¹¹⁴ In a tribute to Marshall on his retirement, Justice Byron White noted that Marshall:

brought to the conference table years of experience in an area that was of vital importance to our work, experience that none of us could claim to match. . . . He characteristically would tell us things that we knew but would rather forget; and he told us much that we did not know due to the limitations of our own experience.¹¹⁵

An example was Marshall's belief, born of first-hand observations, that the death penalty violated the Eighth Amendment and could not be imposed in a fair and impartial manner.¹¹⁶ Therefore, he dissented every time the Court upheld a death sentence or declined to hear a capital case.¹¹⁷

Even when Marshall could not convince his colleagues, his voice had influence. Justice O'Connor recalled the power of his stories, which were "constantly pushing and prodding us to respond not only to the persuasiveness of legal argument but also to the power of moral truth."¹¹⁸ Justice Brennan similarly testified to Marshall's contributions in seeking to "close the gap between constitutional ideal and reality."¹¹⁹

Marshall also took advantage of opportunities to communicate his views more directly to the public. In one widely noted example, he refused to participate in a bicentennial reenactment of the drafting of the Constitution unless it was historically accurate.¹²⁰ It would have to portray him in livery and knee britches, holding a tray.¹²¹ That tabled the proposed reenactment, but Marshall used other celebrations around the Constitution's anniversary to remind the nation of progress yet to be made.¹²² In an address republished in the *Harvard Law Review*, he pointed out that "'We the People' no longer enslave, but the credit does not belong to the framers. It belongs to those who refused to acquiesce in

114. See *id.* at 558-59; RHODE, *supra* note 5, at 184.

115. Byron R. White, *A Tribute to Justice Thurgood Marshall*, 44 STAN. L. REV. 1215, 1216 (1992).

116. Sandra Day O'Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 STAN. L. REV. 1217, 1218 (1992); see also DAVIS & CLARK, *supra* note 10, at 373.

117. See, e.g., *Gregg v. Georgia*, 428 U.S. 153, 231 (1976) (Marshall, J., dissenting); see also RHODE, *supra* note 5, at 184.

118. O'Connor, *supra* note 116, at 1217.

119. William J. Brennan, Jr., *A Tribute to Justice Thurgood Marshall*, 105 HARV. L. REV. 23, 23 (1991).

120. See DAVIS & CLARK, *supra* note 10, at 370.

121. *Id.*; Rhode, *supra* note 99, at 1264; Haley Sweetland Edwards, *A Voice for the Voiceless*, TIME SPECIAL EDITION THURGOOD MARSHALL: THE VISIONARY, Oct. 13, 2017, at 58, 60.

122. Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1, 5 (1987).

outdated notions of ‘liberty,’ ‘justice,’ and ‘equality,’ and who strived to better them.”¹²³

Every attorney, Marshall believed, had an opportunity and obligation to continue that struggle. All lawyers, he told one law school audience, “have a duty to [re]present the public, to be social reformers in however small a way.”¹²⁴ And the public had a duty as well, as he reminded his audience at a Baltimore ceremony commemorating a statue in his honor, “I just want to be sure,” he told the crowd, “that when you see this statue, you won’t think that’s the end of it. I won’t have it that way. There’s too much work to be done.”¹²⁵

Marshall continued to live his life according to that principle, but his time on the Court was often frustrating. He struggled with his poor health, social isolation, and the rollback of progressive rulings that he had struggled to achieve.¹²⁶ Yet he never wavered in his determination to serve as what law professor Kathleen Sullivan described as the “conscience of the Court – a reminder of the human consequences of legal decisions.”¹²⁷ Nor did he lose his sense of humor. In 1970, when Marshall was hospitalized with pneumonia, President Nixon asked to see his medical records. Marshall authorized their release but insisted on including in large bold letters on the bottom of the file, “*Not Yet!*”¹²⁸

Marshall’s perseverance carried personal costs. During many of his final years, his health worsened and he was discomfited not only by the Court’s direction, but also by the opinions that conservative Chief Justices assigned him to write on esoteric issues.¹²⁹ Critics, including some law clerks and at least one of his fellow Justices, felt that he was often inadequately prepared and overly reliant on his own clerks to draft such opinions.¹³⁰ But he soldiered on, unwilling to lose any opportunity to remind the Court and the country of its unfulfilled promises of social justice. Only debilitating health issues forced his retirement at age eighty-three.¹³¹ Even in retirement, he took one last occasion before his death to focus public attention on this unfinished agenda.¹³² In 1992, in accepting

123. *Id.* at 5.

124. Thurgood Marshall, *Law and the Quest for Equality*, 1967 WASH. U. L.Q. 1, 9 (1967).

125. Dale Russakoff, *Tribute to Marshall: City of Baltimore Dedicates Statue to 1st Native Son on High Court*, WASH. POST, May 17, 1980, at C1.

126. RHODE, *supra* note 5, at 185.

127. Greenhouse, *supra* note 24, at A1.

128. WILLIAMS, *supra* note 9, at 347-48.

129. RHODE, *supra* note 5, at 185.

130. For a discussion of the criticisms of Justice Powell and other Justices’ law clerks, see BOB WOODWARD & SCOTT ARMSTRONG, *THE BROTHERS: INSIDE THE SUPREME COURT* 197, 258-59 (1979).

131. RHODE, *supra* note 5, at 185.

132. See DAVIS & CLARK, *supra* note 10, at 369.

the Liberty Medal, he noted, “The battle has not been won; we have barely begun. America can do better. . . . America has no choice but to do better to assure justice for all Americans, Afro and white, rich and poor, educated and illiterate. Our futures are bound together.”¹³³ Marshall dedicated his life to that struggle. At his memorial service a year later, Chief Justice Rehnquist acknowledged Marshall’s extraordinary contribution: “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.”¹³⁴

III. NELSON MANDELA

A. Biographical Background

Nelson Mandela was born in 1918 in a small village in segregated South Africa.¹³⁵ His first name at birth was Rolihlahla, which, as he frequently and fondly pointed out, translates to “troublemaker.”¹³⁶ His father had been a local chief before a British magistrate stripped him of his position.¹³⁷ He died when Mandela was nine, and his mother entrusted the boy’s care to the chief of the Thembu region.¹³⁸ Mandela and many of his friends later credited his leadership capacities to the lessons of listening and influence through soft power that he learned in this royal household.¹³⁹ Mandela also attended a mission school (where he was given the Christian name of Nelson), and then a Methodist college and the University of Fort Hare, South Africa’s only black university.¹⁴⁰ His involvement in student protests led to what he considered a dispute over principle with the administration, resulting in his expulsion.¹⁴¹ To avoid

133. *Id.* (quoting Marshall).

134. Nat Hentoff, *Thurgood Marshall and the Chief*, VILLAGE VOICE, Mar. 9, 1993, at 22 (quoting Chief Justice Rehnquist.); see WILLIAMS, *supra* note 9, at 397.

135. NELSON MANDELA, *LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA* 3 (1994).

136. Bill Keller, *Nelson Mandela, South Africa’s Liberator as Prisoner and President, Dies at 95*, N.Y. TIMES (Dec. 5, 2013), https://www.nytimes.com/2013/12/06/world/africa/nelson-mandela_obit.html; see also MANDELA, *supra* note 135, at 3.

137. Keller, *supra* note 136.

138. *Id.*

139. See *id.*

140. MANDELA, *supra* note 135, at 36, 42-43; ANTHONY SAMPSON, *MANDELA: THE AUTHORIZED BIOGRAPHY* 17 (1999); DAVID JAMES SMITH, *YOUNG MANDELA* 32 (2010).

141. See MARTIN MEREDITH, *MANDELA: A BIOGRAPHY* 19-20 (New York: PublicAffairs 2010) (1997); ROBERT MNOOKIN, *BARGAINING WITH THE DEVIL: WHEN TO NEGOTIATE, WHEN TO FIGHT* 112 (2010).

an arranged marriage at home, Mandela fled to Johannesburg.¹⁴² There, he eventually landed a job as a clerk in a law firm, run by a white partner sympathetic to the African National Congress (“ANC”).¹⁴³ The ANC was the primary vehicle for the anti-apartheid movement, which was fighting a system that denied a vote to eighty percent of the country and enforced racial segregation in every aspect of life.¹⁴⁴ Mandela finished his undergraduate education through a correspondence course and then studied law at the University of Witwatersrand, where he was the only native African student.¹⁴⁵ He became politically active and married a nurse, Evelyn Mase, who was also involved in the ANC.¹⁴⁶ They had four children before a bitter divorce.¹⁴⁷

B. Political Activism

Mandela’s growing political involvement interfered with his studies, and he left the university without a law degree.¹⁴⁸ He received one many years later, becoming one of only eighteen black lawyers in the country.¹⁴⁹ When he opened a law office with a fellow anti-apartheid activist, their partnership became the only black law firm in South Africa.¹⁵⁰ Unsurprisingly, it was popular with aggrieved blacks, particularly in cases of police brutality, and it was correspondingly unpopular with authorities.¹⁵¹ They denied the firm an office permit, which forced it to move to a remote location that was difficult for clients to reach.¹⁵²

142. RHODE, *supra* note 5, at 186.

143. *Id.*

144. *Id.*

145. MANDELA, *supra* note 135, at 89-90; SAMPSON, *supra* note 140, at 35-36; SMITH, *supra* note 141, at 54-55.

146. SAMPSON, *supra* note 140, at 38; SMITH, *supra* note 141, at 84 (noting that Mase was a member of the African National Congress Women’s League).

147. *Nelson Mandela Death: The Women Who Loved Him*, BBC (Dec. 6, 2013), <https://www.bbc.com/news/world-africa-22114543>.

148. SAMPSON, *supra* note 140, at 37.

149. MNOOKIN, *supra* note 141, at 113; *Biography of Nelson Mandela*, NELSON MANDELA FOUND., <https://www.nelsonmandela.org/content/page/biography> (last visited May 18, 2020) (noting Mandela received an LLB in 1989 through the University of South Africa); Nomfundo Manyathi-Jele, *Late President Mandela’s Academic Life and Legal Career*, DE REBUS (Apr. 1, 2014), <http://www.derebus.org.za/late-president-mandelas-academic-life-legal-career> (noting that Mandela could practice as an attorney, despite not having a law degree, as “during 1949 the minimum qualification for entering the [legal] profession was the Attorney’s Diploma (Dip Proc) followed by five years of articles”).

150. MANDELA, *supra* note 135, at 148-49; *Corrections*, N.Y. TIMES, Dec. 24, 2013, at A2; Keller, *supra* note 136.

151. MANDELA, *supra* note 135, at 149; SAMPSON, *supra* note 140, at 78-82.

152. MANDELA, *supra* note 135, at 151 (noting that Mandela “interpreted [forced relocation] as an effort by the authorities to put [his law firm] out of business” and as such, “occupied [the] premises illegally”); SAMPSON, *supra* note 140, at 78-79.

Mandela's political activism was similarly unpalatable, and he was banned several times from holding any elective office, attending meetings, or making public speeches.¹⁵³ The regime's brutal suppression of political dissent convinced Mandela and his colleagues in the ANC that they had no alternative to armed resistance. In 1956, Mandela, along with most of the ANC's high officials, were arrested and charged with treason.¹⁵⁴ After extended delays and violent protests, the defendants were acquitted in 1961.¹⁵⁵ While the proceedings were pending, Mandela married a social worker, Winnie Madikizela, who also became active in ANC activities.¹⁵⁶ The couple had two children.¹⁵⁷

Following his acquittal, Mandela went underground. Referred to as the "Black Pimpernel," Mandela traveled around the country, organizing ANC stay-at-home strikes, and creating an armed wing of the ANC, known as Umkhonto we Sizwe ("MK"), meaning "Spear of the Nation."¹⁵⁸ MK activists engaged in acts of sabotage that, as Mandela explained, "did not involve loss of life [and therefore] offered the best hope for reconciliation among the races afterward."¹⁵⁹ Strategies included night bombings of military installations, power plants, telephone lines, and transport links.¹⁶⁰ Activists also organized mass protests, which, in 1960, led the government to ban ANC activities.¹⁶¹ The government also passed a Sabotage Bill, which authorized the death penalty for even minor acts of destruction.¹⁶² Mandela was undaunted, but with a warrant out for his arrest, he lived in constant danger.¹⁶³ He seldom saw his family. As Winnie later complained, she was the "most unmarried married woman."¹⁶⁴ His now six children felt slighted as well. His five-year old son once asked his mother if his father lived somewhere else.¹⁶⁵ One of

153. SAMPSON, *supra* note 140, at 81-82, 104.

154. *Id.* at 102-04; MANDELA, *supra* note 135, at 199-200.

155. MANDELA, *supra* note 135, at 258-59; SAMPSON, *supra* note 140, at 142; SMITH, *supra* note 141, at 215.

156. MANDELA, *supra* note 135, at 213-16; SAMPSON, *supra* note 140, at 112-13.

157. *Nelson Mandela Death: The Women Who Loved Him*, *supra* note 147.

158. MANDELA, *supra* note 135, at 266-69; SAMPSON, *supra* note 140, at 150-51.

159. MANDELA, *supra* note 135, at 282-83.

160. *Id.* at 283.

161. African National Congress Timeline 1960-1969, S. AFR. HIST. ONLINE, <https://www.sahistory.org.za/topic/african-national-congress-timeline-1960-1969> (last visited May 18, 2020).

162. SAMPSON, *supra* note 140, at 168.

163. See Press Release, Nelson Mandela, On Freedom: "The Struggle Is My Life" (June 26, 1961) (on file with the United Nations at <https://www.un.org/en/events/mandeladay/struggle.shtml>).

164. Ruth Weiss, *Close Up on Winnie Mandela*, BANMARCHIVE (Feb. 1986), http://banmarchive.org.uk/collections/mt/pdf/86_02_44.pdf.

165. BRUCE W. JENTLESON, *THE PEACEMAKERS: LEADERSHIP LESSONS FROM TWENTIETH-CENTURY STATESMANSHIP* 141 (2018).

his daughters later told him, “You are a father to all our people, but you have never had the time to be a father to me.”¹⁶⁶

In 1962, after an international tour to raise money for anti-apartheid activities, Mandela was arrested on charges of inciting workers’ strikes and leaving the country without permission.¹⁶⁷ His strategy was to put the government on trial. He refused to call witnesses and turned his plea of mitigation into a celebrated indictment of the anti-apartheid regime and the disease, poverty, illiteracy, and bans on employment and self-determination that it had inflicted on black residents.¹⁶⁸ Mandela’s conviction and sentence of five years in prison was a prelude to more serious charges.¹⁶⁹ A police raid unearthed evidence that led to the prosecution of Mandela and other ANC members for sabotage and conspiracy to overthrow the government.¹⁷⁰

Mandela and his codefendants admitted sabotage but denied treason.¹⁷¹ His eloquent defense at trial established his reputation as the world leader of the anti-apartheid movement. As Mandela explained, his involvement in sabotage came only as a last resort after many years of tyranny and oppression:

All lawful modes of expressing opposition to this principle [of white supremacy] had been closed by legislation, and we were placed in a position in which we had either to accept a permanent state of inferiority or to defy the government. We chose to defy the law. . . . It was only when all else had failed, when all channels of peaceful protest had been barred to us, that the decision was made to embark on violent forms of political struggle We did so not because we desired such a course, but solely because the government had left us with no other choice.¹⁷²

In another widely quoted passage from his trial defense, Mandela concluded:

I have cherished the ideal of a democratic and free society in which all persons will live together in harmony and with equal opportunities. It is an ideal for which I hope to live for and to see realized. But my lord, if it needs be, it is an ideal for which I am prepared to die.¹⁷³

166. SAMPSON, *supra* note 140, at 442.

167. *Id.* at 167-72.

168. *Id.* at 174.

169. *Id.* at 175, 184.

170. *Id.* at 183-84.

171. *Id.* at 192.

172. MEREDITH, *supra* note 141, at 261-62.

173. PETER LIMB, NELSON MANDELA: A BIOGRAPHY 76 (2008); Keller, *supra* note 136.

After a three-week adjournment, it took the trial judge no more than three minutes to find all conspirators except one guilty, and that defendant was immediately arrested on new offenses before he even left the courtroom.¹⁷⁴ Mandela and his codefendants were sentenced to life imprisonment.¹⁷⁵ The trial helped marshal support for the anti-apartheid movement. The *Times of London* noted, “[T]he verdict of history will be that the ultimate guilty party is the government in power.”¹⁷⁶

When Mandela entered prison he was forty-four and he would not leave prison until he was seventy-one.¹⁷⁷ The conditions were brutal: they involved hard labor at lime quarries, where the reflection and dust often caused serious eye damage.¹⁷⁸ It took three years before authorities granted requests for sunglasses, and Mandela’s eyes never recovered.¹⁷⁹ Even after surgery, he could read only with difficulty.¹⁸⁰ He could send or receive a letter only once every six months, and authorities heavily censored the correspondence, or withheld it out of spite.¹⁸¹ Solitary confinement and casual beatings were common.¹⁸² The kitchen staff was corrupt, so food sometimes ran out.¹⁸³ Although authorities claimed the meals were “balanced,” Mandela noted that the balance was between “unpalatable and inedible.”¹⁸⁴

Mandela quickly emerged as a leader, who honed his political skills by organizing resistance and settling disputes.¹⁸⁵ During this time Mandela learned Afrikaans, the language of the dominant whites, urged other prisoners to do the same, and enlisted guards to smuggle in newspapers and extra rations.¹⁸⁶ As the number of ANC prisoners grew, reaching about one thousand by 1966, Mandela helped build an internal organization and a “University of Robben Island,” in which prisoners educated each other on their areas of expertise and debated current issues.¹⁸⁷ Part of what earned Mandela a leadership role was his great capacity for empathy and his willingness to help with even the most

174. MEREDITH, *supra* note 141, at 268; SAMPSON, *supra* note 140, at 194.

175. MEREDITH, *supra* note 141, at 271-72; SAMPSON, *supra* note 140, at 196.

176. RHODE, *supra* note 5, at 188 (citation omitted).

177. *Id.* (citation omitted); Keller, *supra* note 136.

178. RHODE, *supra* note 5, at 188 (citation omitted).

179. *Id.* (citation omitted).

180. *Id.* (citation omitted).

181. *Id.* at 188 (citation omitted).

182. MEREDITH, *supra* note 141, at 239; RHODE, *supra* note 5, at 188 (citation omitted).

183. RHODE, *supra* note 5, at 188 (citation omitted).

184. *Id.* at 188-89 (citation omitted) (internal quotations omitted).

185. *Id.* at 189.

186. MEREDITH, *supra* note 141, at 299; RHODE, *supra* note 5, at 189 (citation omitted); Keller, *supra* note 136.

187. MEREDITH, *supra* note 141, at 298; SAMPSON, *supra* note 140, at 233-34.

menial and degrading tasks. When a flu epidemic hit the isolation section in 1974, Mandela, who escaped the outbreak, made the rounds each morning, emptying and cleaning the toilet buckets of his sick colleagues.¹⁸⁸

What also generated widespread respect was his courage in standing up to prison authorities. During a tour that three judges made to inspect Robben Island, Mandela complained of the conduct of a particularly vindictive prison commander in his presence.¹⁸⁹ The commander then warned Mandela that if he reported beatings that he had not personally witnessed, “you will get yourself into trouble. You know what I mean?” Mandela turned to the judges and responded, “[G]entlemen, you can see for yourself the type of man we are dealing with as commanding officer. If he can threaten me here, in your presence, you can imagine what he does when you are not here.”¹⁹⁰ Within months, the commander was transferred, and conditions improved.¹⁹¹

During the early 1980s, exiled ANC leaders decided that Mandela should be the human face of their public campaign.¹⁹² “Free Nelson Mandela” became a slogan on globally circulated posters, a frequent protest chant, and even a pop chart anthem in Great Britain, although some supporters had relatively little understanding of his circumstances and even thought “Free” was his Christian name.¹⁹³ Still, the anti-apartheid movement slowly gained traction, and by 1982 more than two thousand mayors in fifty-four countries had signed a petition for Mandela’s release.¹⁹⁴

In response to this growing pressure, the South African government offered to free Mandela seven times between 1975 and 1985 if he would agree to various restrictions, generally including bans on participating in political activities.¹⁹⁵ Mandela repeatedly refused, which prolonged his imprisonment for sixteen years.¹⁹⁶ One of those offers came in 1985, after he was transferred to a prison outside Cape Town.¹⁹⁷ When South African President P.W. Botha offered him freedom if he would renounce the use

188. MEREDITH, *supra* note 141, at 312.

189. *Id.* at 310.

190. *Id.*

191. *Id.* at 310-11.

192. RHODE, *supra* note 5, at 189.

193. *Id.*; Keller, *supra* note 136.

194. LIMB, *supra* note 173, at 91.

195. Joanne B. Ciulla, *Searching for Mandela: The Saint as a Sinner Who Keeps on Trying*, in AUTHENTIC LEADERSHIP: CLASHES, CONVERGENCES, AND COALESCENCES 152, 155 (Donna Ladkin & Chellie Spiller eds., 2013).

196. *Id.*

197. MEREDITH, *supra* note 141, at 340, 351; Ciulla, *supra* note 195, at 155.

of violence, Mandela again refused.¹⁹⁸ He released a statement to the public expressing surprise at the condition because “I am not a violent man,”¹⁹⁹ and putting the responsibility for peace back on Botha:

Let him [Botha] renounce violence. Let him say that he will dismantle apartheid. Let him unban the . . . African National Congress. . . . Let him guarantee free political activity so that people may decide who will govern them. I cherish my own freedom dearly, but I care even more for your freedom. . . . What freedom am I being offered while the organization of the people remains banned? . . . Only free men can negotiate. . . . I cannot and will not give any undertaking at a time when I and you, the people, are not free.²⁰⁰

This statement was the first time anyone had “heard from Mandela in public since his final address in the Supreme Court in Pretoria more than twenty years before.”²⁰¹ It was greeted with cheers at a mass rally, and pressure for his release continued to mount.²⁰² Economic sanctions and boycotts of companies doing business in South Africa also made the apartheid regime more vulnerable.²⁰³

C. *Mandela’s Emergence as a National Leader*

In 1986, Mandela broke the impasse by proposing secret negotiations, and the government agreed.²⁰⁴ It was a risky strategy for Mandela because ANC leaders would never have approved.²⁰⁵ One of his most trusted colleagues felt that if any talks should begin, the government should initiate them.²⁰⁶ Mandela responded that “what did it matter who initiated them? What mattered was what they achieved, not how they started . . . [or] who knocked on the door first.”²⁰⁷ Mandela subsequently got a message to the ANC leaders in exile, and, without disclosing details about the negotiations, gained their authorization to maintain contact with

198. MEREDITH, *supra* note 141, at 351-52; Ciulla, *supra* note 195, at 155.

199. MEREDITH, *supra* note 141, at 351.

200. *Id.* at 352.

201. *Id.*

202. *Id.* at 351-52.

203. *Id.* at 335-36.

204. JOHN KANE, THE POLITICS OF MORAL CAPITAL 136-37 (2001); *The Long Walk of Nelson Mandela: Interviews*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/mandela/interviews/coetsee.html> (last visited May 18, 2020) (referencing an interview of Kobie Coetsee, the former South African Minister of Justice under Apartheid, by John Carlin, where Kobie Coetsee states secret talks were initiated with Mandela in 1986).

205. See KANE, *supra* note 204, at 137.

206. MANDELA, *supra* note 135, at 535.

207. *Id.*

the government.²⁰⁸ Mandela's strategy paid off. South Africa's new president, Frederik Willem de Klerk, ultimately agreed to lift the ban on liberation organizations, to release some political prisoners, to repeal apartheid laws, and to grant Mandela freedom without conditions.²⁰⁹

Following his release, Mandela's first meeting with the press displayed remarkable restraint about his twenty-seven years in prison. His message was one of reconciliation, not rancor. Mandela knew that over four-fifths of Afrikaners feared that black majority rule would jeopardize their safety and prosperity; he wanted to reassure these "fellow South Africans" that they were safe and that the black community "appreciate[d] the contribution they made towards the development of this country."²¹⁰ Mandela rejected calls for black separatism and a political strategy built on racial animosity.²¹¹ Instead, he grounded calls for reconciliation in the African concept of Ubuntu, a version of humanism stressing the interconnectedness of all peoples.²¹²

Mandela's example was of profound importance. As observers later noted, "If [Mandela] had come out of prison and sent a different message . . . this country could be in flames."²¹³ By contrast, if he could emerge from his ordeal calling for reconciliation, how could others who had suffered less demand revenge and retribution? Mandela's absence of vindictiveness served to further bolster his international reputation. Following his release, he took a victory lap around the world, where he was met by cheering crowds and a ticker tape parade in New York City.²¹⁴

The years in prison had, however, taken a tremendous toll. Mandela suffered from tuberculosis and back pains, as well as an eye ailment.²¹⁵ His marriage had also disintegrated.²¹⁶ His wife's affair and misappropriation of ANC funds led the couple to separate.²¹⁷ In addition to his physical and marital difficulties, Mandela faced severe criticism from some ANC members, who suspected him of having been "bought

208. See MNOOKIN, *supra* note 141, at 121.

209. KANE, *supra* note 204, at 138; MEREDITH, *supra* note 141, at 397.

210. See MEREDITH, *supra* note 141, at 402; Hermann Giliomee, *Surrender Without Defeat: Afrikaners and the South African "Miracle"*, AM. ACAD. ARTS & SCI., Spring 1997, at 113, 120. For nationwide survey data, see Kate Manzo & Pat McGowan, *Afrikaner Fears and the Politics of Despair: Understanding Change in South Africa*, 36 INT'L STUD. Q. 1, 21 (1992).

211. RHODE, *supra* note 5, at 190-91.

212. JENTLESON, *supra* note 165, at 145-46.

213. SAMPSON, *supra* note 140, at 524-25 (quoting Graça Machel).

214. TOM LODGE, MANDELA: A CRITICAL LIFE 198 (2006); MEREDITH, *supra* note 141, at 409-10.

215. RHODE, *supra* note 5, at 191 (citation omitted).

216. *Id.*

217. *Id.*

off by the authorities.”²¹⁸ These personal challenges were compounded by the nation’s racial violence, economic chaos, and backlash from both the white right and black left.²¹⁹ Mandela and de Klerk were each arguing with their own parties as much as with each other, and also had to contend with militant Zulus and their charismatic leader Mangosuthu Buthelezi.²²⁰ Negotiations were almost ended by de Klerk’s insistence on power sharing rather than majority rule, and by an Afrikaner’s assassination of a beloved leader of black youth.²²¹ Mandela went on national television appealing for calm.²²² He shrewdly pointed out that it was only through an Afrikaner witness who had risked her life in coming forward that the police were able to apprehend the assassin.²²³ Mandela added, violence would “serve only the interests of the assassins” and would trample on values that the slain leader had stood for.²²⁴ As a result, the protests remained relatively peaceful and negotiations resumed, which helped solidify Mandela’s reputation as a leader.²²⁵

When the talks culminated in free elections and a peaceful transition to democracy, Mandela and de Klerk shared the Nobel Peace Prize.²²⁶ They were unlikely allies. *Time* magazine, when awarding the two leaders its “Men of the Year” award, noted that “[t]heir negotiations at times resembled nothing so much as the conflict they were trying to resolve.”²²⁷ Their “mutual bitterness and resentments . . . [were] palpable. How could these two have agreed on anything—lunch, for instance, much less the remaking of a nation?”²²⁸ But both were ultimately able to rise above their personal animosity. Although Mandela despised de Klerk’s tolerance of apartheid and indifference to racial violence, he recognized that “I need him. Whether I like him or not is irrelevant.”²²⁹ It was Mandela’s unique capacity to blend principle with pragmatism that helped forge the foundations for a sustainable democracy.

Mandela’s character strengths also served him well in the subsequent battle with de Klerk for the presidency. As one biographer put it, Mandela’s “exemplary lack of bitterness, his insistence on national

218. MANDELA, *supra* note 135, at 572; MEREDITH, *supra* note 14, at 405-07.

219. RHODE, *supra* note 5, at 191 (citation omitted); SAMPSON, *supra* note 140, at 457-58.

220. MANDELA, *supra* note 135, at 574-76; RHODE, *supra* note 5, at 191 (citation omitted).

221. RHODE, *supra* note 5, at 191 (citation omitted).

222. *Id.*

223. *Id.*; SAMPSON, *supra* note 140, at 461-62.

224. MEREDITH, *supra* note 141, at 478.

225. *Id.* at 478-79; RHODE, *supra* note 5, at 191-92.

226. RHODE, *supra* note 5, at 192.

227. Lance Morrow, *To Conquer the Past*, TIME, Jan. 3, 1994, at 36.

228. Paul Gray, *Nelson Mandela & F.W. de Klerk*, TIME, Jan. 3, 1994, at 54.

229. MEREDITH, *supra* note 141, at 494.

reconciliation and his willingness to compromise had earned him enduring respect among his white adversaries. The white community would not vote for him, but they would accept a government under his presidency.”²³⁰ In a nationally televised debate between the two presidential rivals, Mandela won support by extending his hand at the close of his remarks and stating,

I think we are a shining example to the entire world of people drawn from different racial groups, who have a common loyalty, a common love, to their common country. . . . We are going to face the problems of this country together. I am proud to hold your hand for us to go forward.²³¹

At age seventy-five, Mandela won the general election with sixty-three percent of the votes.²³² Blacks lined up at the polls, sometimes waiting for as long as five hours, to cast their first presidential vote.²³³ As one voter observed, after waiting “nearly three hundred and fifty years, three hundred and fifty minutes is nothing.”²³⁴ An estimated billion viewers around the world watched Mandela’s inauguration, which included three of his former prison warders as his personal guests.²³⁵

As president, Mandela faced enormous challenges. Apartheid had left a searing legacy of racial inequality and poverty. Almost half of all South African households were poor and a third of the population was illiterate.²³⁶ The economy was in dire straits, and the new government was saddled with crippling interest payments on debts incurred by the apartheid regime.²³⁷ Accommodations to the white community met with harsh criticism from blacks.²³⁸ But Mandela had seen the consequences of white flight in other post-colonial African nations, and he took pains to reassure Afrikaners that they would be protected and represented in the “Rainbow nation.”²³⁹ De Klerk served as Mandela’s first Deputy President, several other whites served as cabinet ministers, and Buthelezi was his Minister for Home Affairs.²⁴⁰ Mandela also went out of his way

230. *Id.* at 493.

231. MANDELA, *supra* note 135, at 617; MEREDITH, *supra* note 141, at 501; SAMPSON, *supra* note 140, at 481.

232. RHODE, *supra* note 5, at 192.

233. *Id.* (citations omitted).

234. SAMPSON, *supra* note 140, at 482.

235. MEREDITH, *supra* note 141, at 514; SAMPSON, *supra* note 140, at 485.

236. MEREDITH, *supra* note 141, at 518-19.

237. *Id.* at 519-20.

238. RHODE, *supra* note 5, at 193 (citations omitted).

239. *See* LODGE, *supra* note 214, at 213; RHODE, *supra* note 5, at 193 (citations omitted); SAMPSON, *supra* note 140, at 495-96.

240. RHODE, *supra* note 5, at 193; SAMPSON, *supra* note 140, at 499-503.

to support rugby, an Afrikaner sport, and urged other blacks to do the same.²⁴¹ When South Africa won the 1995 World Cup, he walked onto the field wearing the team's green jersey.²⁴² As de Klerk later noted, that gesture "won the hearts of millions of white rugby fans."²⁴³ In presenting the trophy, Mandela said, "Thanks for what you have done for South Africa."²⁴⁴ The team's captain responded, "Thanks for what *you* have done to South Africa."²⁴⁵

Another masterful stroke of bridge building was the Truth and Reconciliation Commission ("the Commission"). The Commission was a compromise between blacks, who wanted trials and reparations, and Afrikaners, who opposed any such accountability.²⁴⁶ The compromise was for the Commission to offer amnesty from prosecution for those who made full disclosure of crimes carried out with a political objective.²⁴⁷ Much of the public doubted that the process would bring either truth or reconciliation, and predicted that few people would come forward.²⁴⁸ But in the end, over twenty-one thousand individuals testified.²⁴⁹ Although critics charged that both white officials and ANC activists were often evasive and that the process frequently inflamed rather than appeased, many found the findings cathartic.²⁵⁰ Most judged the Commission on the whole to be a success.²⁵¹ Part of the reason was that its condemnations did not spare even the highest-level leaders, including de Klerk and Winnie Mandela.²⁵²

The reconciliation efforts paid off. Although Mandela had the support of only one percent of the white population before the election, he soon won over a majority.²⁵³ He also earned credit from Africans of all races for bringing newfound respect for the rule of law and a constitutional court.²⁵⁴ He "helped solidify the court's legitimacy by publicly recognizing the supremacy of its rulings, even when it found [Mandela's] own actions unconstitutional."²⁵⁵ In the words of one South African law

241. Keller, *supra* note 136.

242. *Id.*; see also LODGE, *supra* note 214, at 212.

243. F.W. DE KLERK, *THE LAST TREK-A NEW BEGINNING* 346 (1998).

244. MEREDITH, *supra* note 141, at 526.

245. *Id.*

246. See Keller, *supra* note 136.

247. JENTLESON, *supra* note 165, at 158; Keller, *supra* note 136.

248. RHODE, *supra* note 5, at 193.

249. MEREDITH, *supra* note 141, at 561.

250. See Keller, *supra* note 136.

251. *Id.*

252. MEREDITH, *supra* note 141, at 561-63.

253. JENTLESON, *supra* note 165, at 158.

254. See RHODE, *supra* note 5, at 194.

255. *Id.*

professor, “Mandela was not a saint, but he could well be described as the patron saint of South Africa’s democratic order.”²⁵⁶

Not all of Mandela’s presidential actions were, however, worthy of respect. He was tolerant of financial misconduct by some members of his government and party, including Winnie, whom he unwisely appointed Deputy Minister of Arts.²⁵⁷ Not until she became openly disloyal to the government did he dismiss her and begin divorce proceedings.²⁵⁸ Bishop Tutu famously charged that Mandela’s government “had stopped the gravy train only long enough to climb aboard.”²⁵⁹ When accused of political cronyism, stifling dissent, and acting dictatorially, Mandela sometimes responded with just the kind of intolerance that opponents were criticizing.²⁶⁰ He delegated most of the day-to-day decision-making to his Deputy President, Thabo Mbeki, and made so many international junkets that critics sometimes sarcastically quipped, “This week President Mandela is paying a visit to South Africa.”²⁶¹ De Klerk complained about Mandela’s “tactic of papering over problems with charm and promises, without taking effective remedial action.”²⁶² During Mandela’s term in office, corruption, crime, poverty, and unemployment remained high, and he initially turned a blind eye to the AIDS crisis.²⁶³ However, as he noted in 2002, in awarding the Nelson Mandela Prize for Health and Human Rights to two HIV researchers, “At least I am willing to admit when I have made a mistake.”²⁶⁴ And he then threw his weight behind efforts to combat the disease.²⁶⁵

Moreover, whatever his political missteps, Mandela’s personal life set a high standard. Accustomed to austerity, Mandela was free of greed and self-dealing. He established a charity with his share of his Nobel Peace Prize and donated one-third of his salary to that charity.²⁶⁶ In his relations with staff, he went out of his way to show courtesy and respect and often invited visiting dignitaries to shake hands with the woman who

256. Pierre De Vos, *To Call Mandela a Saint Is to Dishonor His Memory*, DAILY MAVERICK (Dec. 6, 2013), <https://www.dailymaverick.co.za/opinionista/2013-12-06-to-call-mandela-a-saint-is-to-dishonour-his-memory>.

257. SAMPSON, *supra* note 140, at 491.

258. *Id.* at 491-92.

259. KANE, *supra* note 204, at 145.

260. MEREDITH, *supra* note 141, at 546-48; *see also* DE KLERK, *supra* note 243, at 353-55.

261. SAMPSON, *supra* note 140, at 557, 576.

262. DE KLERK, *supra* note 243, at 352.

263. LODGE, *supra* note 214, at 205-06; MEREDITH, *supra* note 141, at 570-72; SAMPSON, *supra* note 140, at 510.

264. MEREDITH, *supra* note 141, at 584-85.

265. LODGE, *supra* note 214, at 219-20; MEREDITH, *supra* note 141, at 585-86.

266. LODGE, *supra* note 214, at 209.

served them tea.²⁶⁷ At parties, he might spend much of the evening in conversation with a constant stream of gardeners and domestic staff who wanted to greet him.²⁶⁸ According to one biographer, Mandela “wants you to come away from meeting him thinking that he is everything you had ever hoped for.”²⁶⁹ He often succeeded.

After retirement as President, he capitalized on his iconic status to raise large funds for charities.²⁷⁰ He remarried on his eightieth birthday, continued to travel, and finally managed to spend more time with family.²⁷¹ In his autobiography, the only major misgiving Mandela expressed was about his choices concerning his family:

I was always prepared to face the hardships that affected me personally. But my family paid a terrible price, perhaps too dear a price for my commitment. . . . I did not in the beginning choose to place my people above my family, but in attempting to serve my people, I found that I was prevented from fulfilling my obligations as a son, a brother, a father, and a husband. In that way, my commitment to my people, to the millions of South Africans I would never know or meet, was at the expense of the people I knew best and loved most.²⁷²

Yet on his ninetieth birthday, when a CNN reporter asked Mandela if he regretted his choices, Mandela said “No,” because what he was doing was “for the greater good of society.”²⁷³

Five years later, after “retiring from retirement,” Mandela died; his funeral attracted dignitaries from around the world.²⁷⁴ In his remarks at Mandela’s memorial service, President Barack Obama noted that the leader’s great achievement was “to teach that reconciliation is not a matter of ignoring a cruel past, but a means of confronting it with inclusion and generosity and truth. He changed laws, but he also changed hearts.”²⁷⁵ One of those he changed was Obama himself, who credits Mandela’s work with awakening his own responsibilities to others and setting him on the

267. Keller, *supra* note 136.

268. MEREDITH, *supra* note 141, at 482.

269. RICHARD STENGEL, NELSON MANDELA: PORTRAIT OF AN EXTRAORDINARY MAN 6 (Virgin Books ed. 2012) (2010); Ciulla, *supra* note 195, at 168.

270. MEREDITH, *supra* note 141, at 576-77.

271. *Id.* at 575-76.

272. MANDELA, *supra* note 135, at 623.

273. Ciulla, *supra* note 195, at 155 (citation omitted).

274. RHODE, *supra* note 5, at 195; see Terri Rugar, *Nelson Mandela Memorial: Who’s in Attendance*, WASH. POST (Dec. 10, 2013), https://www.washingtonpost.com/world/nelson-mandela-memorial-whos-in-attendance/2013/12/10/5d016e8c-6197-11e3-bf45-61f69f54fc5f_story.html.

275. President Barack Obama, Remarks by President Obama at Memorial Service for Former South African President Nelson Mandela (Dec. 10, 2013) (transcript available at <https://obamawhitehouse.archives.gov/the-press-office/2013/12/10/remarks-president-obama-memorial-service-former-south-african-president->).

“improbable journey that finds me here today.”²⁷⁶ Obama added that “while I will always fall short of Mandela’s example, he makes me want to be a better man. He speaks to what’s best inside us.”²⁷⁷

In assessing Mandela’s legacy, one biographer noted:

[T]he transformation of South Africa from a country riven by racial division and violence to a fledgling democracy represented one of the supreme triumphs of the late twentieth century. Mandela’s role in that transformation was vital to its success. . . . The generosity of spirit he showed after his prison ordeal had a profound impact on his white adversaries, earning him measures of trust and confidence which made a political settlement attainable.²⁷⁸

IV. CONCLUSION: LEADERSHIP LESSONS

What then can we learn about leadership from these two lawyers who changed the course of history? What were the distinctive personal qualities and professional capabilities that made such a difference?

The first was their passion for justice. They both dedicated their lives to a compelling vision of a society free of racial hatred, bigotry, and inequality and inspired others to join the struggle to achieve it.²⁷⁹ Part of that inspiration came through personal example. Their courage and self-sacrifice earned the trust and respect of millions. They both risked their lives and freedom for the cause of social justice.²⁸⁰ They both gave up time for themselves and their families for decades—Mandela for almost his entire life.²⁸¹ And both displayed extraordinary resilience and resolve. Marshall spent his early career working tirelessly against hostile adversaries who had every advantage except justice on their side.²⁸² Mandela endured years of brutal and dehumanizing imprisonment without losing commitment or harboring rancor.²⁸³

In other aspects of their personal lives, they exemplified the values of equal opportunity, dignity, and respect that they fought to secure on a societal level. Marshall hired female lawyers at a time when others would not.²⁸⁴ I personally am a beneficiary of that commitment to fairness. At

276. *Id.*

277. *Id.*

278. MEREDITH, *supra* note 141, at 573.

279. *See* RHODE, *supra* note 5, at 155.

280. *See supra* notes 27-39, 148-72 and accompanying text.

281. *See* MANDELA, *supra* note 135, at 623; *see also supra* notes 93-96, 270-72 and accompanying text.

282. *See supra* notes 32-39 and accompanying text.

283. *See supra* notes 176-87 and accompanying text.

284. KING, *supra* note 25, at 46.

the time I served as his law clerk, some Justices still would not accept women; others would take only one per term. Marshall hired two.²⁸⁵ He also treated coworkers with equal respect whether they were Justices or support staff, and he was notoriously unimpressed by distinctions of wealth, class, or celebrity.²⁸⁶ One widely noted example occurred when Marshall was in London working on a constitution for Kenya. When he had the opportunity to meet Prince Philip and exchange pleasantries, the Prince asked, “Do you care to hear my opinion of lawyers?” Marshall responded, “Only if you care to hear my opinion of princes.”²⁸⁷ Mandela showed a similar commitment to equal treatment. He refused to exclude Afrikaners from positions of influence in his government and made a point of treating staff with the same courtesy that he gave to visiting dignitaries.²⁸⁸

These leaders’ regard for the concerns of others, and their capacity to place common interests above their own, was also part of what made them so effective in forging alliances and building shared commitments to the public good. Both had to contend with vitriolic opposition from within and outside their movements, and wounding accusations that they were selling out to white adversaries.²⁸⁹ Yet Marshall was able to unite the civil rights movement behind a common mission and litigation strategy.²⁹⁰ Mandela was able to forge enough consensus among black South Africans and enough trust among white Afrikaners to negotiate a peaceful transition to democracy.²⁹¹

What also made these leaders so successful was their astute judgment, particularly around matters of timing and tradeoffs. Both looked for what social movement theorists call open “policy windows,” when conditions become possible for transformative change.²⁹² They knew when to take risks and to hold out on matters of principle and when to compromise in pursuit of greater objectives. Marshall was right about when to push the Supreme Court to renounce separate but equal and find racial discrimination unconstitutional.²⁹³ Although he disagreed with tactics of civil disobedience, he recognized the need to support such protests and provide a legal defense.²⁹⁴ So too, Mandela was right in

285. *See id.*

286. *See id.*; WILLIAMS, *supra* note 9, at 286.

287. WILLIAMS, *supra* note 9, at 286.

288. *See supra* notes 238-39, 267-69 and accompanying text.

289. RHODE, *supra* note 5, at 177-78, 187, 193.

290. *See id.* at 177-82.

291. *See supra* notes 219-26 and accompanying text.

292. WALLIS & DOLLERY, *supra* note 1, at 145.

293. *See ZELDEN*, *supra* note 18, at 68.

294. *See supra* notes 81-88 and accompanying text.

making concessions to launch negotiations over apartheid, but also in refusing to give up demands for majority rule and the unconditional release of political prisoners, even when it prolonged their incarceration as well as his own.

Both leaders were legendary advocates. Their eloquence in and out of the courtroom inspired millions and enlisted crucial economic and political support. They each knew the value of symbolic appeals. Marshall used the bicentennial celebration of the Constitution to focus public attention on its unfinished agenda of social justice.²⁹⁵ Mandela threw his support behind rugby and invited former prison guards to his inauguration in pursuit of racial reconciliation and unity.²⁹⁶

Finally, and perhaps most strikingly from our contemporary experience of self-aggrandizing leaders, was the willingness of both men to put concerns of public interest over personal desires for status, power, and position. Marshall stepped down from leadership of the NAACP Inc. Fund when he felt that he had “outlived [his] usefulness.”²⁹⁷ And he left the Court when he felt that his health prevented the performance that the nation deserved from its Justices.²⁹⁸ It was not an easy decision, or one that he ever anticipated making. Earlier in his career, when asked about his plans for retirement, Marshall responded that he intended to serve out the full term of his office, which, he noted, was for life.²⁹⁹ And he sometimes added, with a twinkle, “I expect to die at 110, shot by a jealous husband.”³⁰⁰ But when circumstances changed, Marshall did what he thought was best for the Court and the country. So too, although Mandela’s popularity would have enabled him to continue as president for life, he declined to serve more than one term.³⁰¹ He wanted to avoid setting a pattern of perpetuating leaders who could morph into dictators, as was common in surrounding African states.³⁰²

What is equally striking is the humility both men displayed when asked to assess their own legacy. As noted earlier, Mandela repeatedly insisted that all credit for the South African transition to democracy belonged to the ANC.³⁰³ Yet as Barack Obama noted at Mandela’s

295. See *supra* notes 120-23 and accompanying text.

296. See *supra* notes 234, 240-44 and accompanying text.

297. BALL, *supra* note 13, at 174 (quoting Marshall); ZELDEN, *supra* note 18, at 124 (quoting Marshall).

298. Rosenthal, *supra* note 106, at A1.

299. *Id.*

300. FISS, *supra* note 103, at 27 (quoting Marshall).

301. JENTLESON, *supra* note 165, at 158-59.

302. See *id.* at 159.

303. See *supra* note 6 and accompanying text.

memorial service, his leadership was also critical.³⁰⁴ Mandela “not only embodied Ubuntu,” and its principles of common humanity, “he taught millions to find that truth within themselves. . . . He changed laws, but he also changed hearts.”³⁰⁵ So too, in a press conference announcing Marshall’s retirement from the Court, when a reporter asked how he would like to be remembered, Marshall responded simply, “[H]e did what he could with what he had.”³⁰⁶ It was not a spontaneous quip. He gave a succession of law clerks the same answer.³⁰⁷ I was fortunate to be among them. And the longer I have studied leadership, the more I have come to respect that aspiration and the life that it reflected. After his death, a reporter summed it up: “Not all great men are good men. Thurgood Marshall was both.”³⁰⁸

304. Obama, *supra* note 277.

305. *Id.*

306. *Excerpts from Marshall News Conference*, L.A. TIMES (June 29, 1991, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1991-06-29-mn-1178-story.html>.

307. *See, e.g.*, Janet Cooper Alexander, *TM*, 44 STAN. L. REV. (SPECIAL ISSUE) 1231, 1233 (1992).

308. Stuart Taylor Jr., *Glimpses of the Least Pretentious of Men*, LEGAL TIMES, Feb. 8, 1993, at 36.