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A VIGIL FOR THURGOOD MARSHALL*

Eben Moglen†

Three days after his death, on January 27th, Thurgood Marshall came to the Supreme Court, up the marble steps, for the last time. Congress had ordered Abraham Lincoln's catafalque brought to the Court, and on it the casket of Thurgood Marshall lay in state. His beloved Chief, Earl Warren, had been so honored in the Great Hall of the Court, and no one else. Congress made the right decision about the bier, and it spoke with the voice of the people: no other American, of any age, so deserved to lie where Lincoln slept.

To him, all day on Wednesday, the people came—a score of thousands, we were told, in the blustery bright Washington winter. The President had said a week before that it was spring, but he was optimistic. I stood with perhaps two thousand of the people myself. They knew it was winter, but there was something that they had to do. With others who had been TM's law clerks, I kept vigil by the bier for a time. We stood by turns, in motionless respect as the people passed. TM's son John stood there all day, hour after hour with his trooper's straightness, full of gentle strength, his father's toughness in his face. So by turns we stood, on hard cold marble, and the people came to say goodbye. They too came up the steps and through the doors, above which the Court promises the world EQUAL JUSTICE UNDER LAW. Later the Chief Justice said, and rightly, that no other individual had done more to make those words reality.

But all the people made the words real on Wednesday, for they did equal justice to his memory, one and all, the fortunate and the unfortunate together. I stood silent waiting for them, and they were silent by and large saying what they had come to say. Schoolchildren came, lots of them, to promise with their teachers that the lessons he had struggled all his life to learn would be handed down to their grandchildren, three generations more. Others came with promises too. I remember most clearly a young man, of seventeen or so, who came with his mother. He walked to the casket, as close as the ropes would let him pass. He turned his palms upward, and he clenched his fists. He put his head down on his chest; his fists were clenched so hard I saw his arms tremble. He stood for some minutes, silent and trembling, in the

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† Associate Professor of Law, Columbia Law School. I was one of Justice Marshall's law clerks in the October Term, 1986. This tribute was originally delivered at a memorial service at Columbia Law School on February 18, 1993.

most solemn place he knew, to make the most solemn promise of his life—whatever it was—to himself. TM would have been happy to see him there. Such youthful moments of passionate resolve can change the world, he knew. Thurgood Marshall had such a passionate determination, and he changed the world.

The world was changed more than he knew, and the people came to tell him about it. They brought him their staggering diversity, and they came before him one last time to say: “You see . . . This is what equality is; this is who we are. We are the people you strived for. We are the people you protected. We are the People of the United States of America, and we loved you.”

I stood and watched them as they came, and tried to remember each face I saw. I tried to remember out of gratitude and love, for they knew who he was, and came to show him who they had become because of him. I stood by his side and realized that his long journey was over, and that there, in the Great Hall, he was at home. Here was Odysseus returned from all his wanderings, old and crafty, a teller of tales who had been strong enough to strike down the wicked and unjust in his own hall.

At ten o'clock that night, the last of the people passed, and TM left the Court forever. They lifted him from where Father Abraham had slumbered, and bore him out of the Great Hall, down the marble steps and into history, toward the lighted rotunda of the Capitol. Or so they told me; I wasn't there. I could not bear to see it. I thought of him instead photographed on those same steps—young, confident, and strong, grinning with his invariable mixture of irony and joy—celebrating with his comrades in arms the impossible achievement of an entire nation's dream. I thought of him as he had been, and I could not stand and watch as Odysseus sailed away once more, leaving us all behind.