

Nation mourns Marshall



ASSOCIATED PRESS/1991 PHOTO

Justice Marshall arrives at his home in Falls Church, Va., the day he retired from the Supreme Court in June 1991.

Retired justice, 84, led many civil rights battles

Baltimore native was first black on highest court

By Albert Schilstedt Jr.
Staff Writer

Thurgood Marshall, the indefatigable legal champion of America's mid-century civil rights movement, who became the first black person to serve on the Supreme Court, died yesterday of heart failure.

Justice Marshall, who had been in poor health for the past several years, died at 2 p.m. at Bethesda Naval Medical Center, according to Toni House, Supreme Court spokeswoman. He was 84.

"He was a giant in the quest for

human rights and equal opportunity in the whole history of our country," President Clinton said of the Baltimore native. "Every American should be grateful for the contributions he made as an advocate and as a justice of the United States Supreme Court."

Justice Marshall was to have appeared at the Clinton inaugural ceremony Wednesday to swear in Al Gore as vice president. But Justice Marshall was hospitalized, and the duty went instead to Justice Byron White.

Yesterday, Justice Marshall was characterized as a towering figure in the nation's history, not simply for his 24 years on the Supreme Court, but for the period before, when he effected the legal strategies that ended discrimination in the country.

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"The question looms in my mind," said Parren J. Mitchell, a civil rights leader and Maryland's first black congressman, "where would we be as a race today if there had been no Thurgood Marshall?"

Rep. Kweisi Mfume, Mr. Mitchell's successor representing the Baltimore area's 7th District, said that Justice Marshall "rewrote the dreams of young black people everywhere."

But Justice Marshall's contributions transcended race, said A. Leon Higginbotham, chief judge emeritus of the Third Circuit U.S. Court of Appeals: "For if he had not won the Brown case [in which the Supreme Court ruled that "separate but equal" school systems were unconstitutional], the door of equal opportunity would have been more tightly closed also to women, other minorities and the poor."

Despite his failing health, Justice Marshall remained active in judicial matters until a few months ago.

In October, due to a viral infection, he canceled a trip to Baltimore, where he had volunteered to serve on a three-judge appellate panel hearing some 20 cases.

The Rev. Benjamin L. Hooks, executive director of the NAACP, called Justice Marshall, an "indispensable linchpin" in the civil rights movement.

"Baltimore has a particular reason to be proud," he said, "that two of the giants of the movement were from here, Clarence Mitchell [Parren Mitchell's deceased older brother and for many years the NAACP's influential Washington lobbyist] in the legislative field and Thurgood Marshall in the legal field. Whatever else we say, without the work they did, we would be living in a segregated world."

Gov. William Donald Schaefer said, "As Marylanders, we can be proud to call Thurgood Marshall as one of our own. We will miss his wisdom, determination and courage."

Mayor Kurt L. Schmoke called Justice Marshall "an inspiration to me since I first entered school."

Enolia McMillan, a Marshall contemporary who was the longtime president of the local chapter of the NAACP as well as the national president for six years, paid homage to Thurgood Marshall's intellect and his courage.

Despite his achievements, she said, Justice Marshall was never one to put on airs.

"He was sociable, he was easy-going," said Mrs. McMillan. "There was nothing stiff about him. He was what they used to call 'regular.'"

Family fostered excellence

Born in Baltimore July 2, 1908 — the same year that race riots in Illinois sparked the formation of the National Association for the Advancement of Colored People — young Thurgood was raised in a family that fostered excellence in the face of entrenched racial prejudice.

After graduating with honors from Washington's Howard University Law School in 1933, he went on to devote his legal and judicial career to alleviating the wrongs of three centuries of discrimination.

Twenty-four of those years were spent as an associate justice of the Supreme Court, where he devotedly pursued the goal of equal justice for the poor, the forgotten and the powerless citizens of the United States.

Then, nearing the age of 83 in June 1991, he announced he would retire from the court. He cited his "advancing age and medical condition," which made it impossible for him to meet "the strenuous demands of court work."

The keystone of Justice Marshall's long career, perhaps more important than his service on the Supreme Court, was his 25-year tenure as legal counsel for the NAACP, a period in which he won 29 of the 32 cases he argued before the nation's highest tribunal.

His most stirring victory was the 1954 Supreme Court decision in *Brown vs. Board of Education of Topeka* (Kan.), in which the nine white justices ruled unanimously that "separate but equal" education for black children in the public schools was unconstitutional.

That ruling, which rejected the 1896 arguments of the court in *Plessy vs. Ferguson*, has been described as the most ideologically significant decision in the history of the court. It was also a personal triumph for Mr. Marshall and brought him a degree of national recognition.

A big man with a rich sense of humor, tracing his ancestry to a Congolese slave who was so trampled that his Eastern Shore master finally set him free, Mr. Marshall pressed his courtroom arguments for civil rights in moderate tones laced with simple logic.

In arguing a point about the "equal protection" clause of the 14th Amendment prescribing fairness for all in education, he said: "The 14th Amendment requires equality. The only way to get equality is for two people to get the same thing at the same place and at the same time."

Critics are divided

Some critics found Justice Marshall's Supreme Court career less impressive than his headlined accomplishments as a determined ad-



1990 PHOTO

A statue of Justice Marshall stands at the federal courthouse on Pratt Street.

vocate. Others disagreed, including retired Justice William J. Brennan Jr., the court's perennial liberal who frequently teamed with Justice Marshall in lonely dissent in a series of decisions following the court's gradual turn to the right.

"In those areas [of his particular interests], I don't think there's anyone in the country who can match either his experience or his expression of his experience," Justice Brennan said in a magazine interview.

"When he does put himself to it, the resultant product is just as good as it used to be in his trial days when he was regarded — and with justification — as one of the ablest trial lawyers in the country."

Among the Supreme Court decisions written by Justice Marshall were decrees declaring that shopping centers are public places that cannot restrict demonstrations, that a teacher cannot be fired for speaking truthfully about public issues, and that possessing obscene material in one's own home is not a crime.

Two inches over 6 feet and weighing more than 200 pounds, Justice Marshall cut an imposing figure in his repeated legal battles for racial equality, but he also relied on a quick

Marshall cut an imposing figure in his repeated legal battles for racial equality, but he also relied on a quick wit to get himself through some of the stickier wickets.

And as a Supreme Court justice he would entertain the court's law clerks with endless stories, spiced occasionally with jokes about himself.

One such tale is mentioned in "The Brethren," by Bob Woodward and Scott Armstrong, a study of the behind-the-scenes workings of the high court from 1969 to 1976.

"A favorite of [Justice Marshall's] involved unsuspecting tourists who mistakenly entered the justices' private elevator," the authors wrote. "Finding a lone black man standing there, they said, 'First floor, please.'"

"Yowsa, yowsa," Justice Marshall responded as he pretended to operate the automated elevator and held the door for the tourists as they left.

"Marshall regularly recounted the story, noting the tourists' puzzlement and then confusion as they watched him walk off, and later realized who he was."

Thurgood Marshall was the son of William Canfield Marshall and Norma Williams Marshall.

His father worked as a railroad Pullman car waiter and as a steward at various private clubs in the Baltimore area. His mother was an elementary school teacher here.

The future justice grew up in West Baltimore when, as he recalled years later, "Baltimore was the only major city in the country where Negroes didn't go into downtown department stores."

His parents had named him "Thoroughgood" after his paternal grandfather, who apparently used that name to comply with Union Army regulations during the Civil War requiring every soldier to record both his first and last names.

"By the time I reached the second grade, I got tired of spelling all that out and had shortened it to Thurgood," he explained years later.

William Marshall was an enormous influence on his son's choice of a law career.

"He did it by teaching me to argue, by challenging my logic at every point, by making me prove every statement," Justice Marshall once said. "He never told me to become a lawyer, but he turned me into one."

Justice Marshall graduated from Baltimore's Douglass High School with academic honors but something less than a record of ideal deportment. In fact, he had been such a prankster that his teachers regularly banished him to the basement with orders to memorize various sections of the U.S. Constitution.

It was a beneficial punishment.

"In two years, I knew the whole thing by heart," he said in a 1958 profile published in the *New York Times*.

From Douglass, the young Baltimorean went to Lincoln University in Oxford, Pa. His mother pawned her wedding and engagement rings

to help pay his college expenses, and he worked as a bus boy, baker and grocery clerk to acquire a little more money.

Law school refused him

When he graduated from Lincoln, he was denied admittance to the then all-white University of Maryland Law School. He commuted by train to Howard University, from which he graduated at the top of his class in 1933. He was admitted to the Maryland Bar the same year.

Two years later, Mr. Marshall accomplished as a lawyer what he was unable to achieve as a prospective law student. With two other attorneys, he brought suit against the UM Law School on behalf of a black graduate of Amherst College, Donald G. Murray, who also had been denied admission.

The legal team won the case on the ground that there was not a comparable school for blacks in the state of Maryland.

A year later, 1936, he was lured from his private practice by the New York office of the NAACP, thus beginning his memorable career in behalf of civil rights.

He left Baltimore "glad to be rid of it forever," he recalled in a 1966 interview with *The Baltimore Sun*.

"Now, I go around the country bragging about the fact I am from Baltimore," he said, referring to the fact that the city had quickly integrated its public schools after the Supreme Court's 1954 Brown decision.

In his years as chief counsel for the NAACP, Mr. Marshall was credited by many observers of the civil rights movement with doing more than anyone else to knock down the barriers to racial equality.

His legal efforts ended the so-called "white primary" in the South in 1944 and, four years later, led to the outlawing of restrictive covenants that prevented blacks and other minorities from renting or buying real estate.

Became a judge in 1961

In 1961, Mr. Marshall resigned from his NAACP post to accept an appointment by President John F. Kennedy to serve on the 2nd U.S. Circuit Court of Appeals, which covers New York, parts of Connecticut and Vermont.

Mr. Marshall had been reluctant to leave the NAACP to accept the appeals judgeship.

"I had to fight it out with myself," he said.

In 1965, President Lyndon B. Johnson asked him to step down

from the lifetime appointment on the appeals court to become solicitor general of the United States.

The solicitor general is sometimes referred to as the federal government's principal courtroom lawyer.

At the time, President Johnson called Mr. Marshall the leading champion of civil rights and "a lawyer and a judge of very high ability, a patriot of deep conviction and a gentleman of undisputed integrity."

As the government's chief advocate, Mr. Marshall won Supreme Court approval of the Voting Rights Act of 1965 and joined in a suit that overturned a California constitutional amendment that prohibited open housing legislation.

Two years later, Mr. Johnson nominated him for the Supreme Court.

Justice Marshall served in the last two years of the Warren Court whose liberal tone, which so concerned conservatives, had been set by Chief Justice Earl Warren, an appointee of Republican Dwight D. Eisenhower in 1953.

The new justice was at first in friendly company, joining liberal Justices Brennan, William O. Douglas and Abe Fortas. But the court's membership gradually changed.

By the late 1970s, Justice Marshall had become the court's most consistent dissenter.

In 1978, for instance, he dissented in a 5-4 decision in which the Supreme Court directed the University of California at Davis to admit Allan Bakke, a white man who claimed he had been discriminated against by being denied admission to the university's medical school.

Two years later, a majority of the justices declared that Congress could restrict Medicaid spending for most abortions sought by poor women.

"The court's decision . . . represents a cruel blow to the most powerless members of our society," Justice Marshall declared.

When writing for the majority in a 1981 decision, he rejected the notion that police have a right to search the homes of acquaintances of a criminal suspect, because that power "would create a significant potential for abuse."

In 1991, after announcing his plans to retire, from the court, he was asked at a news conference how he would like to be remembered. "He did what he could with what he had," he replied.

Justice Marshall's first wife, Vivian Burey Marshall, died in 1955 after 25 years of marriage.

Surviving are his second wife, Cecilia Suyat Marshall, a former secretary for the NAACP whom he married in 1965; two sons, Thurgood Marshall Jr., Vice President Gore's legislative affairs coordinator, and John William Marshall, both of northern Virginia; and four grandchildren.

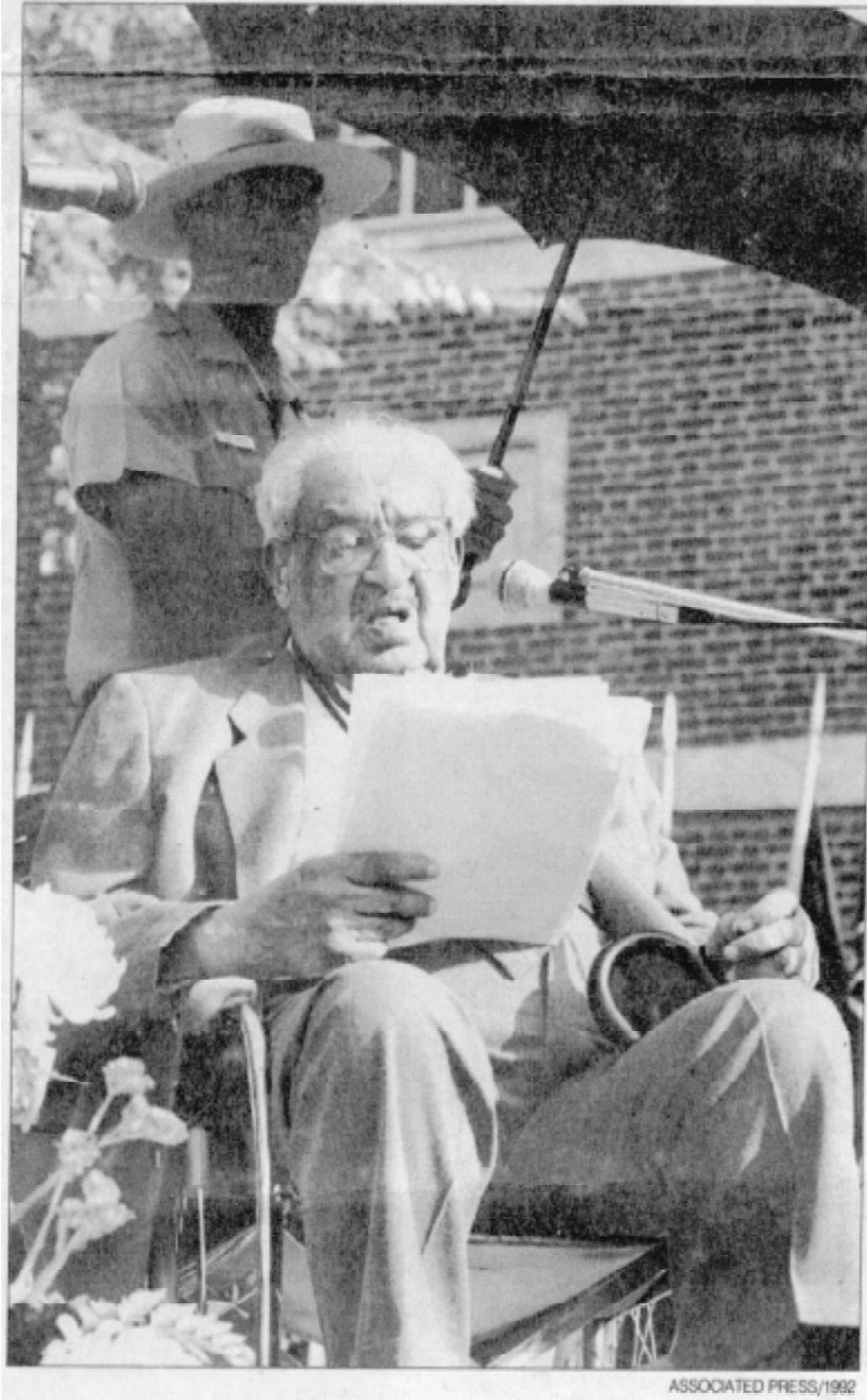


ASSOCIATED PRESS/1967

As a lawyer for the NAACP in 1957, Thurgood Marshall arrives at federal court in Little Rock, Ark. to argue for integration of the public schools and the withdrawal of the National Guard from Central High School.



In 1967, President Lyndon B. Johnson announces the nomination of Mr. Marshall, then the U.S. solicitor general, to be the first black person to sit on the U.S. Supreme Court.



ASSOCIATED PRESS/1992

Retirement from the high court did not mean that Justice Marshall ceased giving speeches, such as one on July 4, 1992, at Independence Hall in Philadelphia.

Marshall made America think differently of race

By Lyle Denniston
Washington Bureau

Thurgood Marshall used simple brilliance, raw courage and rasping humor to force America to think and act differently about race.

A son of Baltimore who never stopped resenting the city's racist past revolutionized the law by using a Constitution that he believed had been born out of racial bigotry.

Justice Marshall found enough promise and flexibility within the Constitution to turn it into an instrument of sweeping reform that destroyed Jim Crowism in the United States.

In his later years, Marshall, the Supreme Court's first black

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justice, was saddened by the passing of liberalism, both from the court and from U.S. public policy, Justice Marshall died yesterday at age 84.

His last disappointment had come just last week, when he was not well enough to fulfill a promise to give the oath of office to Vice President Al Gore.

But Justice Marshall had already passed into history on the strength of a whole nation's remembrance that it was he, sometimes almost alone, who had broken down most of his country's

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Marshall made America think differently of race

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color barriers.

He was as much a man of the past as of the future in recent years, unable to adjust to the facts of political correctness and constitutional compromise.

He never quite understood why he, of all people, would have been thought of as being wrong when he continued to refer to black people as "Negroes," even after it became politically obligatory to refer to them as "African-Americans."

Given to back-slapping, barracks room jokes and unrelieved stubbornness about his own views, Justice Marshall was never successful at "massing" the court to follow his lead.

He left the manipulating of votes to be done by the more politically

adept Justice William J. Brennan Jr. Without even discussing it, the two of them knew that Justice Marshall would almost always vote with Justice Brennan, and vice versa.

In his last day on the bench, he sat silently as a conservative-dominated court announced that it now felt free to abandon many of the liberal precedents of the past, many of which Marshall brought about or strongly supported. But as he sat there, he knew that within the hour, the court would release to the public his scathing dissent railing against the new majority and warning the nation that it was risking constitutional error of a kind that he thought most grave.

Well aware personally that many of his public auditors believed that his contribution to the United States and even to race relations probably

had ended before he ever joined the Supreme Court, Justice Marshall was content to let his judicial record speak for itself as he did his uncommonly creative record as a lawyer — the part of his career that was universally accepted as historic, special and astonishingly successful.

With historic irony, Justice Marshall died on the very day that Washington's main newspaper, the *Post*, lionized him with a review of three new books about his life. Typically, none of those books was an authorized biography; Thurgood Marshall was uncomfortable having someone else describe Thurgood Marshall.

His most symbolic victory in life, to many, was handling one of the first five Supreme Court cases that ended racial segregation in the nation's public schools — at least as a

matter of constitutional necessity if not immediate social reality.

But to Justice Marshall that victory was not mere symbolism. It was a driven need commanded by history.

For symbolism, nothing he had done could match his becoming the first black Supreme Court justice. He was sent to the bench by President Lyndon B. Johnson in 1967, leading to a 24-year career of undiluted liberalism in the law, especially the law that governs how minorities are treated.

But race equality was not his only passion as a justice. He believed, and made it known he believed with all his heart, that the nation risked social and moral barbarism by maintaining the death penalty. Along with Justice Brennan, Justice Marshall insisted routinely that no one ever should be executed, no matter

what their crime.

Behind the august facade of the Supreme Court, his passion ran from salty stories to occasional buffoonery, to warm humanity.

But curiously he spent his public years and his last year of life still nurturing ill feelings toward his home city of Baltimore. He was angry at the way his father, a railroad dining car employee, had suffered from blatant racism.

He seldom would visit the city himself and occasionally had Justice Brennan stand in for him when the city wanted to honor Justice Marshall. In private conversation, he let his anger, over what he believed to be pervasive racism not only in Baltimore but well beyond it, roll like the

heaviest of thunder.

And in public commentary he refused to join in the nation's self-congratulatory celebration of the Constitution's 200th birthday because he felt the nation's most fundamental document had been birthed in colonial racism.

In recent years, new brethren joined him on the court, bringing with them an argument that the Constitution should be interpreted as it would have been in 1787. Justice Marshall unstintingly objected.

He began his judicial career only after he had done what he could — and that was an enormous amount — to revolutionize those beliefs.

THURGOOD MARSHALL: 1908-1993

Marshall's friends and colleagues mourn passing of larger-than-life jurist

New York Times News Service

Those who worked closely with Justice Thurgood Marshall — his law clerks, colleagues on the bench and fellow lawyers — remember him as a larger-than-life presence who left a lasting imprint on the nation, as well as on their personal lives and careers.

"He wouldn't use the term," said Jack Greenberg, the dean of Columbia College, who in 1961 succeeded Mr. Marshall as director-counsel of the NAACP Legal Defense and Educational Fund, "but he had a *jote de vivre*, an exuberance, an aggressiveness about things he attacked, cases that he worked on, issues that he addressed."

In the hours after his death yesterday afternoon, many admirers and former colleagues said they would have difficulty isolating Justice Marshall's most significant contribution to American society, because those contributions seemed endless.

James O. Freedman, who from 1962 to 1963 worked as a clerk for Justice Marshall when he was a U.S. appeals court judge, agreed with many that his former boss' crowning achievement was his successful litigation in 1954 of *Brown vs. Board of Education*, in which the Supreme Court declared that the doctrine of "separate but equal" in regard to racial segregation in public schools no longer had a place in America.

"He allied himself with an idea whose time had come," said Mr. Freedman, now the president of Dartmouth College. "He is probably the only person ever to have been appointed to the Supreme Court who would have had a place in American history before his appointment."

Sherman A. Parks Jr., 42, a Topeka, Kan., lawyer, said the *Brown* decision, and Justice Marshall's role in it, changed the course of his life.

"The *Brown* case gave me an opportunity I wouldn't have had otherwise," said Mr. Parks, who, after the *Brown* case was decided, was per-

"Without him, the whole civil rights movement and the legal enfranchisement of blacks might not have happened when it did. It might have taken a number of years. That was the man's monument. He worked hard for it."

RICHARD KLUGER
Author of 'Simple Justice'

mitted to attend kindergarten at the elementary school involved in the case. "I mean, I'm a black male and now I'm an attorney and the president of the school board that spawned the *Brown* case."

The Rev. Jesse Jackson echoed Mr. Parks' reflections, saying, "For most of us who grew up under segregation, we have never known a day without Thurgood Marshall hovering over us to protect us."

Barbara Underwood, a senior ex-

ecutive district attorney in Queens, who clerked for Justice Marshall at the Supreme Court in the early 1970s, said she hoped history would capture the breadth of his career.

"As a lawyer, as a litigator at the NAACP, as solicitor general and as a judge, he brought his life and his insights to bear on all manner of issues," she said.

Mr. Greenberg said Justice Marshall helped transform the nation "from a society of apartheid to one in

which black people, still under constraints they suffer, nevertheless have an equal chance."

Justice Marshall's former colleagues on the Supreme Court spoke of him in reverential tones that seemed to transcend ideological boundaries.

"We've lost a true American hero," said Justice Sandra Day O'Connor. "I'm thinking of how privileged I feel to have known him and worked with him."

Justice Antonin Scalia said Justice Marshall was one of the few people in American public life who would be forever identified with the ideas that he championed.

"Thurgood Marshall symbolized the end of official racism in the United States," Justice Scalia said. "Despite that well-earned prominence, he was an unassuming, unaffected, straight-forward man — a good and reliable friend."

The man who replaced Justice Marshall on the court, Justice Clarence Thomas, said, "He was a great

lawyer, a great jurist and a great man, and the country is better for his having lived."

Justice Marshall's passing drew an immediate reaction from the White House.

"He was a giant in the quest for human rights and equal opportunity in the whole history of our country," President Clinton said in a statement. "Every American should be grateful for the contributions he made as an advocate and as a justice."

Richard Kluger, whose 1975 book, "Simple Justice," chronicled the *Brown* case, said Mr. Marshall's role in American social history would be difficult to overstate.

"Without him, the whole civil rights movement and the legal enfranchisement of blacks might not have happened when it did," Mr. Kluger said. "It might have taken a number of years. That was the man's monument. He worked hard for it."



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Thurgood Marshall poses with other justices. Seated, from left, are Harry Blackmun, Byron White, Chief Justice William Rehnquist, Mr. Marshall and John Paul Stevens. Standing are Anthony Kennedy, Sandra Day O'Connor, Antonin Scalia and David Souter.