

OPINION • COMMENTARY

Rockville Centre, New York.

For Associate Justice Thurgood Marshall and others like Dr. Robert C. Weaver, the first black cabinet officer as well as the first secretary of the Department of Housing and Urban Development, few things have been more painful than having to watch the resolute reversal of the principles of social justice to which they dedicated their lives and sought to have established as national policies.

Mr. Marshall and Dr. Weaver are the remaining two most noteworthy architects of the intellectual foundations of the modern civil rights movement from the 1930s. Both are giants — one in constitutional law, the other in housing — who were appropriately rewarded by President Johnson by nominations to their respective high federal positions that recognized their places in history.

Dr. Weaver's term ended with Mr. Johnson's presidency. Thus, although he subsequently remained as much more than an interested observer of national housing politics, he was spared the frustrations

Frustrations that Overcame Marshall

By DENTON L. WATSON

of seeing the policy structures he had erected dismantled around him while in office. That has not been the case with Mr. Marshall.

Mr. Marshall spent the most dramatic part of his legal career as special counsel for the National Association for the Advancement of Colored People, a position he used to champion the rights of the oppressed and to make the Constitution a shield in the struggle for racial justice.

Freshly graduated from Howard University School of Law, he was first counsel to the Baltimore NAACP branch, working with Lillie May Jackson, its president and a giant of Maryland history. In 1935, he joined his mentor Charles Hamilton Houston in arguing in the Baltimore City Court the lawsuit by Donald Gaines Murray which resulted

that year in the desegregation of the University of Maryland School of Law.

The Murray case was the first in the long struggle that came to a climax with Mr. Marshall's landmark victory in 1954 in the *Brown v. Board of Education* case, in which the Supreme Court ruled that the "separate but equal" doctrine was unconstitutional. That decision reasserted the full meaning of the Fourteenth Amendment and restored blacks to first-class citizenship.

The experience of witnessing Houston and Marshall arguing the Murray case so brilliantly converted Clarence Mitchell Jr., for whom the Baltimore City courthouse is now named, to the use of the law in another manner, also as an instrument of social change. As director of

the NAACP Washington bureau from 1950 to 1978, Mr. Mitchell led the second phase of the association's successful constitutional struggle in the Congress for passage of the civil-rights laws that strengthened and expanded Mr. Marshall's contributions in the courts.

Mr. Marshall cited his advanced age and failing health as reasons for retiring in his very cryptic letter to President Bush. Nevertheless, his extreme unhappiness with the hard-line, right-wing shift of the Reagan-Bush court has been no secret.

Just two hours before he announced his resignation on Thursday, Justice Marshall issued a stinging dissent in the appeals of *Booth v. Maryland* and *South Carolina v. Gathers*, in which the court re-

versed earlier opinions that barred prosecutors in death-penalty cases from introducing evidence about the victim's character and the effect of the crime on the victim's family. Mr. Marshall said nothing had changed over the past four years since the court had ruled differently in those cases. "Only the personnel of the court did," he said. "Power, not reason, is the new currency of this court's decision-making."

The effectiveness of this and similar messages Mr. Marshall has sent about the grave dangers of the court's radical shift will be revealed by Mr. Bush's choice of his successor. The president was most gracious in praising Justice Marshall for his contributions to the court. A more meaningful expression of appreciation would be the selection of a successor who faithfully continues the philosophy which Mr. Marshall advocated during his nearly 24 years as associate justice.

Denton L. Watson is the author of "Lion in the Lobby: Clarence Mitchell Jr.'s Struggle for the Passage of Civil Rights Laws."