

Books of The Times

Thurgood Marshall, on the Bench and Off

By HERBERT MITGANG

Thurgood Marshall, who was chosen to administer the oath of office to Vice President-elect Al Gore today, is the subject of two biographies about his remarkable career. Both books add to the portrait of the first black to serve as an Associate Justice of the United States Supreme Court. Even more important, they describe a personal history that parallels the fulfilled and unfulfilled aims of the struggle for civil rights by legal means in the last half-century.

Justice Marshall, who retired in 1991, was appointed to the bench in 1967 by President Lyndon B. Johnson. Both biographies devote a good deal of attention to President Bush's appointment of Clarence Thomas, the second black to sit on the Supreme Court. The contrast between the two men as jurists — one a liberal, the other a conservative — is sharply drawn by the authors of both books.

"Dream Makers, Dream Breakers," by Carl T. Rowan, a syndicated columnist and longtime friend of Justice Marshall, is an insider's view with more depth than "Thurgood Marshall," by Michael D. Davis, a journalist who was a leader of the Atlanta sit-ins in the 1960's, and Hunter R. Clark, a Harvard Law School graduate and former Time magazine

writer. Both biographies describe Justice Marshall as an irreverent individualist, combative civil rights lawyer and courageous judge who left a lasting mark on American equality, not only for blacks and other minorities but also for women and the disadvantaged.

Justice Marshall was the great-grandson of a slave and the grandson of a Union Army soldier, which made him at least as much of an American as the Southern Senators who because of his color challenged his right to become Solicitor General of the United States and then a Supreme Court Justice.

All through the book by Mr. Davis and Mr. Clark, there are stories of Justice Marshall's fighting spirit, deflecting humor and directness. When he interviewed prospective law clerks, he asked them if they liked writing dissenting opinions. "If they said no, they didn't get the job," Justice Marshall said. On and off the bench, he didn't worry about offending any people or groups, black or white. Speaking of Malcolm X last year, he said: "I still see no reason to say he is a 'great person, a great Negro.' And I ask a simple question. What did he ever do? Name me one concrete thing he ever did."

The centerpiece of "Thurgood Marshall" is his great victory as the attorney for the NAACP Legal De-

Dream Makers, Dream Breakers

The World of Justice Thurgood Marshall

By Carl T. Rowan

Illustrated. 475 pages. Little, Brown. \$24.95.

Thurgood Marshall

Warrior at the Bar, Rebel on the Bench

By Michael D. Davis and Hunter R. Clark

Illustrated. 400 pages. Birch Lane Press/Carol Publishing. \$24.95.

fense and Educational Fund Inc. in the 1954 landmark case of Brown v. Board of Education of Topeka that outlawed school segregation. The careful preparation by Justice Marshall and his staff went beyond overturning legal precedent. When Chief Justice Earl Warren wrote the unanimous decision for the Court, he cited a number of sociological sources, including Kenneth Clark's studies of the effect of segregation upon young children and Gunnar Myrdal's "American Dilemma."

In its oft-cited conclusion, the Court held: "In the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

In "Dream Makers, Dream Breakers," Mr. Rowan makes an important contribution to Justice Marshall's entire career by citing dozens of cases that illustrate his concerns and legal reach beyond racial matters. He was influential in getting the Supreme Court to rule the death penalty unconstitutional as it was then applied. He entered significant dissents whenever the Court extended the right to approve confessions by coercion. He wrote that the First Amendment pro-

TECTED not only freedom of expression for artists and preachers and newspapermen, but also the right of an inmate not to have his mail read by prison officials.

Justice Marshall was a strong voice for a woman's right to choose whether to carry a pregnancy to term. "I have always been in favor of women's rights, of complete and absolute equality, and that is to bring my wife down to my level," he said, in his personal lighthearted way. "I had a very independent mother. Her mother was a suffragette. She believed in that stuff. So I guess I had it beat into me."

Because of his journalistic relationship with Justice Marshall, Mr. Rowan is able to reveal many of his subject's personal views. Speaking of the Constitution, Justice Marshall says: "I think it's the greatest body of laws set out ever, and what to me, and to many people, is so extraordinary about it is that at this late date you find that it works."

Mr. Rowan often intrudes himself into this unauthorized but decidedly friendly biography. For example, writing about Justice Thomas, he says: "Over 40 years I had heard Marshall curse, in a hundred ways, 'the goddamn black sellouts.' I had no doubt what he was saying about Thomas."

But a biographer is not an autobiographer. It's too bad that Mr. Rowan didn't get Justice Marshall to say what he really thought of the Thomas selection and record on the Court in his own words. It would have made his lively "Dream Makers, Dream Breakers" an even stronger biography than it now is.