

Mr. Civil Rights

DREAM MAKERS, DREAM BREAKERS

The World of Justice Thurgood Marshall.

By Carl T. Rowan.

Illustrated. 475 pp. Boston:

Little, Brown & Company.

\$24.95.

THURGOOD MARSHALL

Warrior at the Bar, Rebel on the Bench.

By Michael D. Davis and Hunter R. Clark.

Illustrated. 400 pp. New York:

Birch Lane Press/

Carol Publishing Group. \$24.95.

By Laura Kalman

WHEN he announced his departure from the United States Supreme Court in June 1991, Thurgood Marshall expressed the hope that President George Bush would not replace him with "the wrong Negro." Surely Marshall would have preferred to surrender his seat to someone a Democratic President might have appointed. But the warrior who had won so many battles against racism could not conquer his own body. "I'm old and coming apart," he informed reporters. Asked what he planned to do in retirement, he replied, "Sit on my rear end."

Few deserved to do so more than Thurgood Marshall, who died last month at the age of 84. As head of the NAACP Legal Defense and Educational Fund for more than 20 years, a judge on the United States Court of Appeals for the Second Circuit in New York, Solicitor General of the United States, and Supreme Court Justice for nearly a quarter-century, this great-grandson of a slave had one of the most significant legal careers of the 20th century, detailed in two new biographies: "Dream Makers, Dream Breakers," by Carl T. Rowan, and "Thurgood Marshall," by Michael D. Davis and Hunter R. Clark.

• • •

From the 1930's through the 1950's, Marshall braved threats of violence from racists as he used his shoestring budget to take his traveling civil rights law office through the South. To millions, he embodied the N.A.A.C.P. "Until Marshall came, the law . . . was whatever a white lawyer or white policeman or white judge said it was," recalled one man he represented in 1946. An ingenious appellate advocate, Marshall won 29 of the 32 cases he argued before the Supreme Court. "He brought us the Constitution as a document like Moses brought the people the Ten Commandments," said

Laura Kalman, a professor of history at the University of California, Santa Barbara, is the author of "Abe Fortas: A Biography."

14 February 7, 1993



Thurgood Marshall in 1965.

Juanita Jackson Mitchell, an N.A.A.C.P. official.

Marshall persuaded the Supreme Court to strike down segregation in voting, housing, public accommodations, buses, railroads, public schools and state universities. Of his most famous victory, *Brown v. Board of Education*, which in 1954 established the right of children to attend desegregated public elementary and secondary schools, Marshall said, "We hit the jackpot."

Payment was a long time coming. Though Marshall dismantled apartheid in the United States, only 2 percent of Southern schoolchildren attended integrated schools a decade after the *Brown* decision. But Marshall remained certain that the courts could bring about positive social change.

Originally he saw little to cheer in Martin Luther King Jr.'s philosophy of nonviolent direct action and dismissed King himself as "a boy on a man's errand." Marshall ultimately swung the N.A.A.C.P.'s weight behind those who engaged in civil disobedience. He never softened toward another black spokesman, Malcolm X. "What did he ever do?" Marshall once asked. "Name me one concrete thing he ever did." Marshall stands as the civil rights movement's pre-eminent liberal legal gradualist.

However, by the time his hero, Lyndon B. Johnson, named Marshall the first black Supreme Court Justice in 1967, liberalism was falling into disrepute. By the 1980's, he joked that he was in the majority on only one issue — "breaking for lunch." Yet he continued to fight against the death penalty and for the expansion of individual rights, the rights of the poor, the rights of the accused, the rights of women. More conservative justices have written of the special voice Marshall added to the Court's deliberations. His stories of his life as a civil rights lawyer forced his colleagues to confront worlds they had never known.

Describing him as "driven, sometimes compas-

sionate, but often ornery; hard-working, hard-cussing and sometimes hard-drinking; hard-to-get-along-with under pressure, self-effacing and graceful in triumph," the syndicated columnist Carl Rowan adds that Marshall was not "Mr. Humility." Neither is Mr. Rowan, who describes his book as "a document of passion and zest that will elevate the thinking and the lives of millions of people." Indeed, Mr. Rowan often seems more interested in talking about himself than about Marshall. Whole chapters, for example, explore his experiences with Eleanor Roosevelt and George Wallace.

Sometimes Mr. Rowan's prose is cute, as when he tells us that his subject as a youth

was no "Thurgoodie-two-shoes." At other times it is plain silly, as when, in speaking of the oral arguments in *Brown v. Board of Education*, Mr. Rowan announces his "respect and admiration for nine men whose bladders and brains sustained them through such endless rhetoric of passion, and even hatred."

"Dream Makers, Dream Breakers" is ahistorical
Marshall's parents "lacked wealth but were not on welfare," Mr. Rowan announces. But no system of income supplements or government child support — nothing that we would now consider welfare — existed at the time. Further, Mr. Rowan employs bizarre methods of proof: he seeks to rebut a rumor that clerks wrote Marshall's opinions by engaging in the "really thrilling enterprise" of showing the substantive similarity between Marshall's off-the-cuff remarks about various legal issues and his formal written opinions. Finally, Mr. Rowan boasts of his "unprecedented access to the closed records" of the NAACP Legal Defense and Educational Fund. Apparently he is unaware that Mark Tushnet used the same materials for his fine 1987 study of the organization's legal strategy.

Michael D. Davis, the author of "Black American Women in Olympic Track and Field," and Hunter R. Clark, the author of "The Camp David Agreements," also get in the way of their stories in "Thurgood Marshall." As a former page of the Supreme Court, Mr. Clark apparently thinks that we need to know that Justice Harry A. Blackmun "liked to write with No. 2 pencils that had been shortened." The book contains its share of such banal observations: "The U.S. Supreme Court is in many ways a monastery of the intellect," the authors proclaim. This book too is ahistorical. To read Mr. Davis and Mr. Clark, one would never know how much the Supreme Court's decree implementing *Brown* "with all deliberate speed" instead of setting a definite date delayed the pace of desegregation. Fur-

ther, the book contains numerous errors, which though trivial (Lewis Kaplan for Lincoln Caplan) suggest that it was written in haste.

Where differences of interpretation arise, it is impossible to know whether to believe Mr. Rowan or Mr. Davis and Mr. Clark. By Mr. Rowan's account, to cite but one example, "Thurgood was a 'bum,' and seemed destined forever to be one" until he went to Howard University's law school and was "rescued" by Charles Hamilton Houston, the school's vice dean. In Mr. Davis and Mr. Clark's version, Marshall was a good student who "began his lifelong pursuit of equal rights" when, as an undergraduate, he desegregated a movie theater in Oxford, Pa. The

flaws in both books, along with the absence of source notes and the sketchy bibliographies, prevent either from being wholly credible.

In the years to come, biographies of Thurgood Marshall will probably become a cottage industry. Those who write them will find some use for these two books. More a memoir of the judge, whom he knew for 40 years, than a biography, Mr. Rowan's book allows us to hear Marshall speak. Mr. Davis and Mr. Clark include valuable information on Marshall's relationship with Martin Luther King Jr. But Marshall deserves better biographies. He was one of the best storytellers around, and his remains one of the best stories to be told. □