

The Evening Sun

Monday, March 15, 1993

Monday Book Reviews

He did what he could

DREAM MAKERS, DREAM BREAKERS: THE WORLD OF JUSTICE THURGOOD MARSHALL. By Carl T. Rowan. Little, Brown. 457 pages. \$24.95.

THURGOOD MARSHALL: WARRIOR AT THE BAR, REBEL ON THE BENCH. By Michael D. Davis and Hunter R. Clark. Birch Lane Press. 387 pages. \$31.95.

WHEN Thurgood Marshall, the first African-American to serve on the U.S. Supreme Court, resigned in 1991, he wanted history to record that "he did what he could, with what he had." These two biographies show that Marshall, who died in January, contributed monumentally to making equal justice under the law a reality for all Americans.

**Mary
Frances
Berry**

When Marshall began to practice law in the 1930s, black Americans were legally and often forcibly segregated everywhere he looked, from theaters and restaurants to schools and courtrooms. When Marshall switched from advocacy to judging in 1961, he deserved credit for reversing those policies of exclusion. On the Court of Appeals and then on the Supreme Court, Marshall wrote more than 300 major opinions, stripping law of its racist taint in order to give more than lip service to the promises of the Constitution and the Declaration of Independence.

Along with his friend, Justice William Brennan, he was also a staunch defender of civil liberties such as privacy rights and due-process protection for people accused of crimes. Marshall also joined Brennan in fervent opposition to the death penalty on the argument that not only did it fail as a deterrent, it often failed to prosecute the guilty party, an irreversible mistake.

Syndicated columnist Carl Rowan's book benefits from his 40 years of friendship with Marshall. While Marshall was often consumed by a quest, Mr. Rowan reports, he also could be warm and fun-loving. Marshall relaxed by playing poker and spinning tales, imbibing Wild Turkey all the while, in congenial company. Mr. Rowan gives generous space to Marshall's critics, including those who hinted that as a Supreme Court justice he was intellectually deficient and lazy. But he also questions this criticism with portraits of Marshall's unlimited appetite for hard work and an explanation of his jocular phrases and acid humor; they were, the author suggests, a clever mask for his anger, not a sign of carelessness.

Mr. Rowan's fast-moving account is full of anecdotes from his conversations over the years with Marshall himself, his colleagues and friends, his supporters and detractors. Those include allies such as Eleanor Roosevelt and Hubert Humphrey, and opponents such as Strom Thurmond and George Wallace. Throughout the text, Mr. Rowan liberally sprinkles his own views on civil rights and civil liberties.

"Thurgood Marshall: Warrior at the Bar, Rebel on the Bench" covers Marshall's early life and career with more distance and reserve. The authors' most significant contribution is their explanation of Marshall's hostility toward non-violence as a strategy during the Montgomery bus boycott and the 1960s protests.

Both books chronicle Marshall's civil rights work, from prohibiting the use of restrictive covenants to exclude blacks from

housing to his crowning achievement, the 1954 victory in *Brown vs. Board of Education of Topeka* that finally consigned "separate but equal" to the dust heap of constitutional law. Both books also explain that President Kennedy appointed Marshall to the court of appeals only at the price demanded by Senate Judiciary Committee Chairman James Eastland, D-Miss.: the nomination of Eastland's segregationist college roommate to a federal district court post in the South.

President Johnson, demonstrating his leadership on civil rights after Kennedy's assassination, appointed Marshall solicitor general and then to the Supreme Court. After a grueling year-long battle for his confirmation over the opposition of segregationists led by Sen. Strom Thurmond of South Carolina, Marshall joined the court.

Marshall's health and spirits sagged when the court became conservative during the Reagan-Bush years. The death penalty was reinstated. The court rejected affirmative action to remedy job discrimination while rebuffing minority business set-asides to remedy the exclusion of blacks from government contracts. Outside the court, the persistence of de facto segregation and unequal education mocked the victory in *Brown*. After Justice Brennan stepped down in 1990, the court conferences became more difficult to bear. Hoping for a political chance, Marshall delayed his departure.

The last straw, though, was the court's 1991 decision to allow "victim impact" statements before a jury that was to decide whether someone convicted of a particularly heinous crime would get a life sentence or the death penalty. "Beyond his absolute rejection of the death penalty," Mr. Rowan writes, "Marshall found revolting the idea that a jury that already knew the character of the crime and the criminal should be emotionalized at sentencing time by relatives telling of their anguish. In his days as a lawyer, Thurgood had seen numerous black men consigned to death not by intellectual or legal considerations, but by pure racial emotion on the part of jurors."

On June 27, 1991, Marshall denounced his colleagues; later that same day, he announced his retirement for health reasons.

Mr. Rowan conveys, with elegance and directness, Marshall's joy of spirit, his easy manner, his casual grace, his way with words in court, his folksiness and his respect for professional women.

Marshall's contributions as a lawyer and judge touched most aspects of American life. Asked whether his successor should be black, Marshall answered with a proverb from his father: "There's no difference between a black snake and a white snake. They'll both bite." For those suffering from racial discrimination Marshall left the message that "You can't use race as an excuse for not doing what you should be doing."

He also admonished all Americans to join in the continuing struggle to end racism. "The legal system can force open doors, and sometimes, even knock down walls," he noted. "But it cannot build bridges . . . We will only attain freedom if we learn to appreciate what is different and muster the courage to discover what is fundamentally the same . . . Knock down the fences that divide. Reach out; freedom lies just on the other side."

Mary Frances Berry is professor of history at the University of Pennsylvania and a member of the U.S. Commission on Civil Rights.