

**Weather**

**Today:** Mostly sunny, mild.  
High 77. Low 57. Wind 8-16 mph.  
**Thursday:** Sunny to partly cloudy.  
High 81. Wind west 6-12 mph.  
**Yesterday:** Temp. range: 67-83.  
AQI: 70. Details on Page D2.

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## Chief Justice Castigates Library *Rehnquist Calls Opening Marshall Files 'Bad Judgment'*

By Joan Biskupic and Benjamin Weiser  
*Washington Post Staff Writers*

Chief Justice William H. Rehnquist rebuked the Library of Congress yesterday for using "bad judgment" in making public the files of the late Justice Thurgood Marshall and warned that other Supreme Court justices might not give their papers to the library.

"Unless there is some presently unknown basis for the Library's action," Rehnquist wrote, "we think it is such that future donors of judicial papers will be inclined to look elsewhere for a repository."

Rehnquist said in his sharply worded letter to Librarian of Congress James H. Billington that he was speaking for a "majority of the active justices." On Monday, William T. Coleman Jr., a lawyer representing the Marshall family and the late justice's estate, asked the library to withdraw the files until he could meet with Billington to determine the justice's precise wishes.

A spokesman said yesterday the library, which has said it followed Marshall's wishes in opening the papers, had no comment on the chief justice's letter or Coleman's request. The

See COURT, A6, Col. 1



Chief Justice William H. Rehnquist said his letter reflects views of "majority of the active justices."

# Rehnquist Rebukes Library of Congress Over Marshall Files

COURT, From A1

papers have remained open while the library reviews its records on Marshall's donation. Billington has been out of the country and returned to Washington yesterday.

The dispute over Marshall's papers, which provide a rare look into the workings of the contemporary court, erupted after The Washington Post began a series of articles Sunday based on the contents of the collection.

Coleman said he was certain that Marshall, who died Jan. 24, did not want his papers made public so soon after his death. He said Marshall had sought during his lifetime to preserve the court's confidentiality and would not have wanted his papers made available while justices with whom he served were still on the bench. Marshall donated the papers after his retirement in 1991.

Library officials have said they followed Marshall's wishes. A legal agreement that Marshall signed Oct. 24, 1991, says "the collection shall be available to the public at the discretion of the library" and that the papers "shall be limited to private study on the premises of the library by researchers or scholars engaged in serious research."

David Wigdor, assistant chief of the library's manuscript division, told The Post on Monday that Marshall met with library officials before signing the agreement. "Justice Marshall was very clear about what he wanted to do with his papers," Wigdor said. "He . . . wanted them to be available without restriction upon his death."

Since the publication of The Post's stories, scores of other reporters, lawyers and scholars have visited the library's manuscript division to examine the files on what traditionally is one of the most secretive institutions of government. Post reporters first looked at the Marshall files two weeks ago after learning of their availability while researching another story.

Rehnquist's letter is itself unusual. Supreme Court justices rarely become involved in the affairs of another government institution. "It's extraordinary," said the court's chief public information officer.

The chief justice wrote that a majority of justices were "surprised and disappointed" by the library's opening of the files.

"Given the Court's long tradition of confidentiality in its deliberations," Rehnquist continued, "we believe this failure to consult reflects bad judgment on the part of the library. Most members of the court recognize that after the passage of a certain amount of time, our papers should be available for historical research. But to release Justice Marshall's papers dealing with deliberations which occurred as recently as two terms ago is something quite different."

Columnist Carl T. Rowan, in an article today on The Post's op-ed

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—Chief Justice William H. Rehnquist

page, said Marshall had told him that he was concerned about violating the court's confidentiality. Rowan said Marshall had backed out of an agreement to cooperate with Rowan on a book about Marshall's court years—forsaking a "guaranteed quarter-million dollars"—because of that concern. Rowan wrote the book without access to Marshall's private court files.

Coleman, representing the Marshall family, complained that lawyers were using the files to determine new strategies for future cases.

"I will say that it is the worst thing I have seen happen in a long time around this town," said Cole-



JUSTICE THURGOOD MARSHALL  
... left access to library's discretion

man, transportation secretary in the Ford administration and a law clerk to Justice Felix Frankfurter in the 1948-49 Supreme Court term.

Floyd Abrams, a New York lawyer who specializes in free speech cases, said, "My bottom line is that the court will survive this. . . . I am confident that the public will profit by being better educated about the actual functioning of one of our three branches of government."

Abrams, who has argued before the high court on several occasions, added: "It would be more than a little unusual for the library to now close papers that have already been open to the public. It will also be futile. Secrets cannot be rebottled."

At the library itself yesterday, a staff member said the crowd continued to grow. Other news organizations have begun reporting on particular cases and on the routine business of the institution.

The Associated Press reported that Marshall routinely turned down the many invitations that poured into his office, no matter what the occasion or host. Sometimes, he scrawled this simple message on the invitation: "No can do."

The files show that he denied requests to deliver the eulogy at the memorial service for Chief Justice Earl Warren, to shake hands with five visiting high school students and to attend a vice presidential lunch in honor of the shah of Iran.