

LETTERS TO THE EDITOR

Library of Congress Honored Justice Marshall's Wish

McGeorge Bundy needlessly muddles his otherwise generally sensible discussion of the Thurgood Marshall papers by making two factually incorrect statements that are gratuitously unfair to the professional staff of the Library of Congress and implicitly demeaning to others ["The Marshall Papers: An Old Lesson," op-ed, May 30].

Mr. Bundy first suggests that we misled "a very old man" into thinking that the library would exercise some kind of continuing, restrictive discretion in determining who would get to see the papers and when after his death.

On the contrary, Justice Marshall clearly instructed me and two other staff curators at the library in a long meeting on Oct. 7, 1991, to make his papers available without restriction to the public when he died. He was in excellent intellectual form and in full control of the meeting. He had clearly reached his conclusion on a matter that justices of the court frequently discuss among themselves and have historically resolved in a wide variety of ways. We did not suggest this formulation to him; he specified it to us.

We then sent Justice Marshall a suggested legal instrument of gift on Oct. 21, 1991, offering to discuss any changes or modifications he might want. He returned the agreement

signed and unchanged on Oct. 24. During his lifetime, neither he nor anyone on his behalf asked any questions or expressed any reservations to us about our agreement with him. (Nor did anyone ask questions or express reservations to us about this agreement when—as Justice Marshall had ordered—the papers were opened after his death last January. Such concerns were presented to us only after the recent newspaper articles on his collection.)

It seems implausible and even patronizing to imply that one of the most outstanding jurists of our time would not himself have specified restrictions if he had ever changed his mind. It seems equally unlikely that he would not have understood the modest and limited nature of the "discretion" that public repositories routinely seek and are granted in the legal documents of gift that are drawn up once a donor has clearly specified his intentions.

Mr. Bundy's second incorrect assertion is that the Library of Congress is specially vulnerable to outside pressures and thus might not be a dependable repository for future donors. Quite to the contrary, the Library of Congress has proved itself to be scrupulously faithful in honoring Thurgood Marshall's request—and in firmly resisting subsequent pressures

even when they may be well-meaning and come from high judicial figures with concerns about Supreme Court procedures and from esteemed family and friends of the donor distressed about newspaper articles based on the donor's papers.

Mr. Bundy's idea of considering multiple repositories is of course eminently sensible in itself, but Mr. Bundy misleads potential future donors by suggesting that they should somehow be apprehensive about the Library of Congress because of his odd idea that "what the library fears today is the power of the press." What we and other libraries fear these days is that we may not get the funds necessary to sustain our mission.

Potential donors should feel reassured rather than apprehensive. Congress has an admirable record of sustaining the nation's library and has supported librarians of Congress for nearly two centuries despite pressure from many directions. Potential future donors can be confident that the Library of Congress will scrupulously adhere to whatever conditions they establish for the use of their papers—as we have done in the case of Justice Marshall and 12 other justices of the U.S. Supreme Court.

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