

Thurgood Marshall in his own words

by Sanford Roberts

Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall

by Carl Rowan

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When Thurgood Marshall succumbed this past January to old age and prolonged illness, the spontaneous outpouring of public affection, respect, and reverence which marked his passing exceeded that of any public figure in recent memory. During a career spanning nearly six decades, this legendary civil rights lawyer and judge did more than any single individual to effectuate the constitutional ideal of equal justice under the law. Justice Marshall did not pen an autobiography, nor did he leave behind any compilation of memoirs: Carl Rowan's meticulous effort to capture the essence of Marshall in his own words, significantly fills the void.

For the author, this book represents a labor of love. Rowan, a longtime friend and interlocutor of the late Justice Marshall, painstakingly reconstructed 40 years' worth of conversations from video footage, tape recordings, newspaper articles, and "notes that have yellowed with time" to create an authentic and compelling portrait of this uniquely American figure. The National Association for the Advancement of Colored People (NAACP) also provided material assistance by permitting Rowan unprecedented access to closed NAACP records housed at the Library of Congress.

Rowan, the budding journalist, met Marshall, the NAACP's chief counsel, during the feverish days when the latter was preparing to argue the case of *Brown v. Board of*

Education, the landmark U.S. Supreme Court case which outlawed racial segregation in the public schools. Marshall sat Rowan down in his office and lectured him on what he was up against. "The weight of bad court decisions over a century. Hell, we're fighting Chief Justice Roger Taney who said [in the *Dred Scott* decision] for seven members of the Court in 1857 that a Negro was not a citizen of the United States and had 'no rights that a white man is bound to respect.' The problem we've got to overcome is that millions of white people still believe what Taney wrote."

Thurgood Marshall, born on July 2, 1908 in Baltimore, Maryland, grew to maturity in an America where segregation and racial discrimination held dominion over much of the land. The youthful Marshall showed no sign of the future legal warrior who would topple the citadels of Jim Crow. He coasted his way through high school and college, devoting more time to extracurricular revelry than to schoolwork. When Marshall's fiancée, Vivien (Buster) Burey came home to meet her betrothed's family, an uncle took her aside cautioning, "You ought to beware of Thurgood. He always was a bum, he is a bum, and he always will be a bum!"

'Marshall's revenge'

Despite the caveats, Buster married Thurgood Marshall in 1929. One year later, her new husband applied for admission to the University of Maryland School of Law which flatly refused his application on racial grounds. The Maryland officials certainly did not foresee that their snubbing of the young Thurgood Marshall would change the course of American civil rights and constitutional history.

After the Maryland rejection, Marshall matriculated at the Law School of Howard University where he came under the tutelage of dean Charles Houston. Rowan writes that

"the nation owes a grotesque sort of debt to the bigots who wouldn't let Thurgood enroll at the University of Maryland law school. Jim Crow delivered Marshall into the hands of Charles Hamilton Houston, the vice dean at Howard, and Marshall was transported from 'bum' to national hero." Dean Houston, a perfectionist teacher of the first order, instilled Marshall with the discipline and dedication which became his hallmark as an attorney. Houston, who became chief counsel for the NAACP in the early '30s, summoned Marshall to New York in 1936 to serve as his deputy. Two years later, Houston's frail health forced him into retirement and the 30-year-old Thurgood Marshall succeeded him.

The nation owes the University of Maryland another "grotesque sort of debt." Thurgood Marshall smoldered with a desire to get even with the Maryland authorities responsible for his non-acceptance. His opportunity for revenge came in 1935, when Maryland declined to enroll another young black man, Donald Murray, in their law school. Luckily Donald Murray, the law student, had one thing which Thurgood Marshall, the law student, did not have five years earlier: He had Thurgood Marshall as his lawyer. Marshall succeeded in convincing the trial judge and the Maryland Court of Appeals that Maryland's actions violated the rights of his client under the Equal Protection Clause to the U.S. Constitution.

"Marshall's Revenge," as the Murray case came to be known, established a precedent which cannot be overstated. When Marshall and Houston brought their first challenge to segregated education to the U.S. Supreme Court in *Missouri, ex rel. Gaines v. Canada*, the majority opinion, finding no precedents of its own in favor of the plaintiff, relied exclusively upon the Murray decision of the Maryland Court of Appeals. *Gaines* became the stepping-stone precedent for every succeeding case leading up to *Brown*.

This book does not let you forget that stepping-stones in Marshall's desegregation lawsuits were often ordinary citizens who showed uncommon valor. These suitors risked physical assault, mob violence, economic retaliation, social ostracism, and even death in their quest for justice. It was an act of extraordinary bravery simply to allow Marshall to stay in your house. Marshall repeatedly expressed his admiration for these individuals. "I don't deserve the credit," he told Rowan on one occasion. The credit belongs to "the people who dared to stand up, to file lawsuits, were beaten, and sometimes murdered after I spoke my piece and took the fastest goddamn train I could find out of town."

Unfortunately, the anonymous heroes do not get top billing in this book. The work's principal flaw is reflected in its title, which pays tribute in a rather stale way to the liberal heroes of yesteryear whose stories are interspersed throughout. The *Dream Makers* is the American liberal's political pantheon of Eleanor Roosevelt, Hubert Humphrey, and so on. The rogue's gallery of *Dream Breakers* includes Strom Thurmond, George Wallace, and the Nixon-Agnew administration. Rowan's interviews and accounts of the makers and

breakers of dreams detract from the main narrative.

This book also suffers from sloppy editing and research. Factual errors and nonsequiturs abound. For example, the author reports in one location that "the landmark decision *Miranda v. Arizona* [came] on June 13, 1972, with Marshall on the Supreme Court and voting joyously with the majority." *Miranda* was decided on June 13, 1966. Marshall did not vote with majority, joyously or otherwise, since he did not become a member of the Court until 1967.

Marshall's 1967 appointment marked the first ascension of an African-American to the Supreme Court. For nearly a quarter century, Justice Marshall pioneered and contributed to historic changes in the court's approach to questions of free speech, equal protection, the constitutional right of privacy, safeguards for criminal suspects and defendants, and the application of the Bill of Rights to the states.

Against the death penalty

An unflinching opponent of the death penalty, Marshall debunked the idea that capital punishment deterred crime. "You remember the story in England when they made pickpocketing a capital offense?" He asked Rowan. "When they were hanging the first pickpocket, people were picking pockets in the crowd!" Justice Marshall, dismayed and disgusted at the bloodlust shown by the court under Chief Justice William Rehnquist in the handling of its capital cases, could no longer restrain himself in his final opinion written on the court.

On June 27, 1991, the court overturned its own precedent of recent vintage and allowed the lower courts to consider inflammatory victim impact statements in capital cases. Marshall's dissent in this case, *Payne v. Tennessee*, opens with a shot across the bow of the court's new majority: "[P]ower, not reason, is the new currency of this court's decisionmaking." So forceful and eloquent was the *Payne* dissent that conservative columnist James J. Kilpatrick effused praise and offered the following thanksgiving: "Let us thank Thurgood Marshall for his last cannonade. Nothing in his judicial life became him like the leaving of it."

Justice Marshall disdained those who treated the U.S. Constitution as a sacred text or as a document whose meaning was frozen in time 200 years ago. In a controversial speech commemorating the Constitution's bicentennial, Marshall observed, "I do not believe that the meaning of the Constitution was forever 'fixed' at the Philadelphia Convention. Nor do I find the wisdom, foresight, and sense of justice exhibited by the Framers particularly profound. To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights we hold as fundamental today." The true miracle of the Constitution, according to this Supreme Court Justice, was not its birth, but its life. And the life of the Constitution in this century owes much to the life of Thurgood Marshall.