

SEP 18 1974

## Mr. Justice Black NYTimes NYTimes

The judicial career of Associate Justice Hugo L. Black was eloquent testimony to the proposition that few things are less predictable than the consequences of a Supreme Court appointment. Just a month after the Senate had approved President Roosevelt's nomination of that ardent New Dealer, the new Justice was being assailed as a one-time member of the Ku Klux Klan. But in one of his first major opinions he was to enunciate the eloquent defense of minority rights which would characterize his long and fruitful years on the bench: "Under our constitutional system," he wrote, "courts stand, against any winds that blow, as a refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement."

Justice Black did not fancy himself an activist on the Court, preferring to reserve that term for fellow Justices he often opposed, particularly Justice Felix Frankfurter. Yet in all logic he was among the great activists. He wrote the opinion that forced the states to reapportion their legislatures. And, even more important, he was primarily responsible, in a series of cases, for bringing the states within the purview of the Federal Bill of Rights. He did not regard such major breaks with precedent as "activism," simply because he regarded them as compelled by the plain language of the Constitution, which he revered to the point of carrying a copy of it at all times in his coat pocket. Those who invoked their own view of what was "reasonable" or socially desirable were, in his view, the activists.

It was this strict adherence to the words of the Constitution that led him to so far-reaching a position on the First Amendment that he rejected even the concept of libel. By the same token, it explained what seemed like an upsurge of conservatism in his latter years when he upheld a poll tax, sustained a state law against birth control and took a dim view of civil rights demonstrations on property not authorized for the purpose. The Constitution, he said, protected speech; it said nothing about behavior, which might plausibly be subjected to restraints.

Yet he was clearly in the liberal tradition and, given the ideological alignment of his colleagues, his retirement may well set the stage for one of those historic shifts in the Court's composition.

The country can only hope that, regardless of ideology, President Nixon will replace him with a man of comparable stature. For Justice Black made a distinguished contribution to the Court. If his position was too literal for some, it was nevertheless unfailingly taken on the fixed star of the Constitution. What better guide in a time of upheaval?