

Departing Justice Viewed as One of a Kind

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BOSTON, Nov. 12—The liberal conscience of the country, a willful judge, an authentic genius, a hasty and impatient opinion-writer—those are a few of the contradictory things that have been said about William O. Douglas as a judge.

News Appraisal There has never been a Supreme Court Justice like him, in substance or style. Even as a controversialist, a frequent dissenter, he was a man of internal contradiction. He seemed not to care about the world's opinion of what he did, but he was actually a shy and deeply private person.

If there was a single major premise of his judicial philosophy, it was fear of government. "He expects government to be evil," a former law clerk once said—not because of bad motives, but because Justice Douglas thought the Constitution required that skepticism of American judges. He wrote once:

"The Constitution was designed to take government off the backs of people and make it difficult for government to do anything to the individual."

His Views on Freedom Freedom of speech was perhaps the most prominent among the many themes of his work as a judge. Along with the late Hugo L. Black, he dissented from many decisions—especially in the 1950's—that permitted official punishment and investigation of unorthodox beliefs.

In 1951, for example, he and Justice Black alone voted to reverse the convictions of Communist Party leaders for conspiring to teach and advocate the Government's overthrow by violence. Justice Douglas wrote:

"Free speech—the glory of our system of government—should not be sacrificed on anything less than plain and objective proof of danger that the evil advocated is imminent . . . Our faith should be that our people will never give support to these advocates of revolution, so long as we remain loyal to the purposes for which our nation was founded."

The prospect of controversy did not keep Justice Douglas from decisions that he thought were right.

In the summer of 1953, with the Court in recess, he stayed the execution of Julius and Ethel Rosenberg because of a new legal argument on behalf of the convicted atomic spies. Amid angry political comment, the whole Court met in special session and overruled him.

The Rosenbergs were executed. But privately, Justice Douglas said that he was sure that he was right on the law.

His opinions were often colloquial in language, without the usual formal legal analysis. He quoted books and pamphlets and speeches from around the world. But often, too, he

dissented without any opinion, or with only a cryptic comment.

Critics among the legal commentators accused him of taking too casual an attitude. But those who have known him best say that the way he wrote as a judge was a clue to the inner man.

A Private View

The great judicial dissenters have often written as if to rally opinion to their view. That was true of Holmes and Brandeis, and more recently of Justice Black, who passionately worked to convince his colleagues and the country that he was right.

Justice Douglas took a more private view. At a meeting two years ago, he said:

"I haven't been much of a proselytizer on the court. I've had the theory that the only soul I had to save was my own."

The span of Justice Douglas's service on the Supreme Court alone assures him a special place in history. He served for 36 years and seven months, longer than any other person. He served with 26 of the 99 other men who have been Justices.

Although he has a clear, strong judicial philosophy, his associations on the Court could surmount ideological differences. He made quick friends with the conservative William H. Rehnquist after his appointment in 1971.

More than one of his colleagues on the Court has referred to him privately as a "genius." But, of course, there were also sharp differences, notably with Justice Felix Frankfurter. For years they did not speak.

Justice Douglas made his mark on many issues apart from freedom of speech. He used his great personal knowledge of the outdoors in writing for the Court on environmental questions. He was also an expert in the field of business regulation: The securities acts, patents and antitrust law.

Work Termed Easy

His early life as a Westerner struggling up from poverty was also reflected in his work as a judge. He wrote from personal knowledge of the problems of railroad workers, Indians, Mexican-Americans and the poor.

One of the positions on which Justice Douglas stood alone was his oft-stated belief that

the Court's work was easy. While the caseload piled up, he said that he could easily do the job in four days a week.

He vigorously opposed the many recent suggestions for narrowing the jurisdiction of the Court to help it cope with the much larger volume of cases. As recently as last June 23, after he had been absent from the Court because of his serious illness, he reiterated his view that the existing load could easily be carried.

In a letter then, the Justice suggested that proposals for change in the Court's jurisdiction were really motivated by fear of its liberalizing influence. He said:

"With all respect, the state court judges and lower Federal court judges are usually quite conservative. Hence, letting their decision stand is to keep alive a conservative ruling supportive of the status quo."

"That means that the mounting pleas of individuals are not heard, and that the Court will no longer take on highly controversial issues. The establishment and its coterie of news commentators will applaud as the law will have been shaped by the philosophy of judges who share their view."