

# At 70, the 'Youngest' Justice of All

William Orville Douglas

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WASHINGTON, May 25—During a recess at the trial of Dr. Benjamin Spock in Boston last year, word filtered out that the Supreme Court had upheld the Federal statute making it a crime to burn draft cards. "What was the vote?" a dejected radical lawyer asked. "Seven to

Man  
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Douglas," an observer answered. "Everyone chuckled but nobody was surprised. In his 30 years on the Supreme Court, William Orville Douglas has often stood alone in defense of civil liberties that other justices could not or would not recognize.

And now he stands alone again, under fire for receiving outside income as an officer of the Albert Parvin Foundation. The Justice, who resigned from the organization Friday, has replied to critics by charging that a Federal tax investigation of the foundation was "manufactured" to force him off the bench.

Seventy years old, of middle height, ruddy complexion and Spencer Tracy style, Justice Douglas, his heartbeat aided by a pacemaker, is seen by his admirers as "the youngest man on the Court."

"Bill is the only one of them that has consistently kept faith with the kids," a lawyer friend says. "He's an existentialist figure, really, always his own man, fearful of neither people, forces nor establishments. Who else would have tried to stop the Army from sending boys to Vietnam, just as he once tried to keep the Government from executing the Rosenbergs? When the heat is on—and it's on now—the only guy on that Court I'd bet on to stand up is Bill Douglas."

His enemies, political and racial conservatives ranging from distinguished Harvard law graduates to rural Southern segregationists, would not disagree with that estimate. Indeed, for many of them his penchant for "standing up" is enough reason to impeach him, an effort that was made in 1953 in the House of Representatives after he issued a stay of execution to Julius and Ethel Rosenberg, the convicted atom spies.

#### Fourth Marriage

A less serious but perhaps just as heartfelt attempt to impeach him came in the summer of 1966 when Justice Douglas married his fourth wife, the then 23-year-old Cathleen Heffernan, less than a month after his third wife, 26-year-old Joan Martin, had divorced him and remarried.

The Justice was first married in 1923 to Mildred Riddle. The marriage produced two children, William Jr. and Mildred Riddle Douglas (now Mrs. Frank Welles Jr.). The couple were divorced in 1953 and the next year Justice Douglas married Mercedes Hester Davidson. After their



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#### A life-long dissenter

divorce, in 1963, he married Miss Martin, and three years later Miss Heffernan.

But despite some sniping in the House at his "moral character," Justice Douglas has remained as unconcerned, apparently, as he has always been over criticism from all quarters.

His professional critics are mostly lawyers and professors who continue to follow the philosophy of the late Justice Felix Frankfurter, roughly defined as "judicial restraint," or as President Nixon likes to call it, "strict constructionism."

They have long accused Justice Douglas of being "result-oriented." By this they mean that he assertedly ignores established precedents in order to reach results that he favors.

He dismisses this criticism as frivolous, stating that his rulings are based on his interpretation of the Constitution, which he believes is firmly planted in history.

"The American Government," he once wrote, "is premised on the theory that if the mind of man is to be free, his ideas, his beliefs, his ideology, his philosophy must be placed beyond the reach of government."

In the early 1950's this view, held also by Justice Hugo Black, came into sharp conflict with that of a majority of the court. Led intellectually by Justice Frankfurter, the Supreme Court upheld one after another governmental incursion on free speech and association, aimed at what was widely termed the "menace" of domestic Communism.

Arguing that the First Amendment was intended to protect all speech, including the Communists', who he once described as "miserable merchants of unwanted ideas," Justice Douglas spent most of these "McCarthy years" in dissent.

The phrase "Black and Douglas dissenting" became a commonplace, and at the same time a banner to which a generation of law students rallied, much as an earlier

generation had marched to the music of "Holmes and Brandeis dissenting."

#### Born in Minnesota

William O. Douglas was born in Maine, Minn., on Oct. 16, 1898, the son of a circuit-riding Presbyterian minister who died when his son was 6. The family moved to Yakima, Wash. in 1904.

A childhood victim of polio, Mr. Douglas strengthened his legs by mountain climbing, a diversion that has occupied him ever since and that led him into a lifetime devotion to conservation.

Young Douglas was the valedictorian at Yakima High School, then president of the student body and a member of Phi Beta Kappa at Whitman College in Walla Walla. His education was financed by a scholarship and odd jobs including window washing.

He arrived in New York in the early twenties with six cents in his pocket and an admissions slip to Columbia Law School. In 1925 he graduated second in his class, worked for a while with a Wall Street law firm and then joined the faculty at Yale.

From there he was recruited in 1934 by Joseph P. Kennedy, the late President's father, to work on the Securities and Exchange Commission, of which he became chairman in 1936, and in 1939, at the age of 40, he was named to the Supreme Court by President Roosevelt.

In 1944, Mr. Douglas came close to being nominated for the Vice Presidency of the United States. President Roosevelt, agreeing to drop Henry A. Wallace, said he would take either Justice Douglas or Harry S. Truman. The nod, of course, went to Mr. Truman, who became president in April of 1945.

In an interview two years ago in Parade magazine, Justice Douglas said that had he become President instead of Mr. Truman, "there would have been no Hiroshima" and the Cold War with China as well as the Korean and Vietnam wars might have been avoided.

On the other hand, the Supreme Court would have been without its most liberal member, its quickest and many feel most brilliant mind, its fastest writer and surely its most colorful and controversial character.

It is authoritatively reported that William O. Douglas, having written a dissent in a case and being impatient to leave town on one of his many world tours, dropped in to see the Justice who was supposed to be writing the majority opinion.

"I just can't seem to write the damn thing, Bill," the jurist said.

Whereupon, Justice Douglas offered to write the majority opinion. And he did, thus becoming the first Justice to write a ruling to his own dissent.

If the story is apochryphal, the fact is that they don't tell stories like that about anybody else but Bill Douglas.

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