

# SUPREME COURT HAS WEATHERED MANY 'STORMS'

**Editor's Note:** The normal calm of the U.S. Supreme Court was shattered recently when one associate justice publicly berated another for a major decision which he opposed. Does this mean the nation's highest tribunal is split irreparably by a personality rift? The court has weathered many such storms as outlined in the following dispatch by a veteran UPI Supreme Court reporter.

**By CHARLOTTE G. MOULTON**

Washington—If the angry words which shattered the Supreme Court's judicial calm recently meant another personality rift, the tribunal has survived them before—big and little.

Veteran Justice Hugo L. Black, one of the figures in the latest tiff, has played a major part in two previous clashes. He has shown an uncommon ability to ride out such storms—always with lips sealed.

His adversary was another veteran justice—William O. Douglas. Courtroom spectators were aghast to hear Douglas unleash a scathing criticism of both the content and style of Black's majority opinion in the 40-year-old California-Arizona Colorado river water dispute, the biggest water lawsuit ever filed in this country.

Douglas' verbal onslaught on his colleague was more pronounced because Black was presiding in the absence of Chief Justice Earl Warren. Black is senior justice in point of service and is 13 years older than Douglas.

**Read Opinion**  
The 77-year-old Black had read excerpts from a 52-page opinion in which it was evident he took pride of authorship. The case was complex



**JUSTICES**—The Supreme Court has weathered many personality rifts. The most recent one was this month with the reading of Justice L. Black's (left) majority opinion on the Colorado river water dispute. He was criticized by Justice William O. Douglas (right). Two years ago another opinion of Black's triggered a clash between former Justice Felix Frankfurter and Chief Justice Earl Warren (center). (UPI)

and he explored the issues carefully. The decision added up to California losing to Arizona but left some problems unsettled.

Douglas was ready with a written dissent, replete with fire and brimstone. He said the case would be marked in the future "as the baldest attempt by judges in modern times to spin their own philosophy into the fabric of the will of the legislature."

**Critical References**  
A common claim of the judicial minority is that the majority has taken over the function of Congress; that they fit a case to their own ideology rather than into the law. And the sharpest dissents usually are by justices

who themselves have very strong opinions which did not prevail.

This could have been the case with Douglas. An outdoor enthusiast, he is particularly sensitive to water and conservation problems. His feelings were so strong, in fact, that he departed from his text to make critical references to the length of Black's opinion.

"The advantage of a long opinion such as the one Justice Black has filed," he said tartly, "is that it is very difficult to see how it failed to reach the right result, because one gets lost in words."

The nine justices have a happy practice of shaking hands all around each time they go into conference on

cases. This time it was hard to see how the Black-Douglas handshake could be so cordial as it had been before—if, indeed, the cordiality had not been cooling for some time.

Where individual liberties are concerned, the two have stood together for more than 24 years as interpreters of the constitution. They see the court as an active force in securing for every one free speech and other guarantees in the Bill of Rights.

**Personality Differences**  
But personality differences can mean just as much in the Supreme Court as they do elsewhere. In fact, Black, over the years, developed a much closer relationship with Justice Felix Frankfurter

who was at the opposite pole in legal philosophy. Black has said this term how much he misses the peppery little justice from Massachusetts, who was compelled to step down last year because of his health.

These three are the last of President Franklin D. Roosevelt's appointees. Black came to the Court in 1937; Douglas and Frankfurter in 1939. Black an Alabamian, is a warm-hearted, soft-spoken. His job as an associate justice is his life. He devotes himself to it almost exclusively.

Douglas, on the other hand, has wide-ranging interests which are brought to public attention. He delivers countless speeches, goes prowling in remote corners of the earth, and has written some 17 books since becoming a justice.

Some of these works are expressions of his views on censorship, religious freedom and the like. Others are travel books. Still others are about hiking, mountain climbing, fishing and life in the outdoors.

**Continuing Concern**  
Douglas also has a continuing concern with international affairs, particularly in the Arab countries where he has traveled. He has spoken out forcefully when he felt the United States was pursuing a mistaken policy with underdeveloped nations. He has

also advocated admitting Red China to the United Nations. Douglas was in the news recently when it was disclosed that his wife, Mercedes, plans to divorce him this summer. They have no children. He has two grown children by an earlier marriage, which also ended in divorce.

Douglas has denied rumors that he plans to leave the court next October when he could retire at full salary of \$35,000 a year.

He will no doubt always be remembered for granting a stay of execution to Atom Spies Julius and Ethel Rosenberg, who were finally put to death in 1953.

Right now, most persons probably associate Black with the historic opinion he authored last term striking down New York's state-composed school prayer.

**Nettled Warren**  
It was an opinion of Black's that triggered a clash in open court two years ago between Frankfurter and Warren. Frankfurter started things by the manner of his dissent. He had the habit of making a little speech about his opinions, rather than reading them.

This practice had nettled Warren a time or two before. On this particular day, Frankfurter pitched into Black and the others who joined his opinion reversing a murder conviction. Frank-

furter accused them of "plucking out" an isolated episode from the record. He suggested that "judges are apt to find what the mind is looking for."

Warren, who had agreed with Black, leaned forward when Frankfurter finished. He informed the courtroom audience that Frankfurter's statement was more like a lecture on a prosecutor's closing argument than a Supreme Court opinion.

"As I understand it," the Chief Justice said icily, "the purpose of reporting an opinion in the courtroom is to inform the public and is not for the purpose of degrading this court. I assure you that if any written opinion had said those things, I would have had much to say myself."

Frankfurter muttered something about leaving the matter "to the record."

**POST-WAR FEUD**  
The most savage court "feud" in post-war years was between Black and the late Justice Robert H. Jackson who was detached from his judicial post in 1946 to serve as Chief United States Prosecutor at the War Crimes Trials in Neurnberg, Germany.

That war broke into the open on the issue whether

Black should have disqualified himself in a case argued by his former law partner. There are no rules for disqualification. Each justice decides when he must withdraw and for what reasons.

The law partner won a 5 to 4 decision, which allowed soft coal miners "portal-to-portal" pay. Black did not write the opinion but joined in it. Jackson's dissent ended

in words remarkably similar to those of Douglas.

"We doubt," he said, "if one can find in the long line of criticized cases one in which the court has made a more extreme exertion of power or one so little supported or explained by either the statute or the record in the case."

The ruckus died down and in later years so did the feud.

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## College of Cardinals Has Varied in Size During Years; Now Chooses Pope

**By LOUIS CASSELS**  
United Press International

Included in the worldwide membership of the Roman Catholic church are some 560 million laymen, 425,000 priests and 2,300 bishops.

But there are only 82 cardinals.

The cardinals are known as "the princes of the church." They outrank everyone except a reigning pope. Their pivotal position in the hierarchy is signified by the very name cardinal, which comes from the Latin word "cardo," meaning a hinge.

Next Wednesday all the cardinals who are physically able will gather at the Vatican to choose one of their number as the new pope.

Electing pope has become the most important function of the Sacred College of Cardinals. But cardinals also have three other duties. They assist the pope at major liturgical services, counsel him in consistories and aid him in administration of the church.

**Origin Noted**

The term cardinal has been used in the Catholic church for about 1,500 years. It was originally applied to about 25 priests in the Diocese of Rome who were outstanding for their wisdom, seniority or the importance of their parish churches. They served informally as advisers and assistants to the pope. But they were not regarded as "princes of the church" nor did they have a special role in electing a new pope. Until late in the 12th Century, all the clergy of Rome, and a number of laymen, including emperors and noblemen, participated in the election of popes.

In 1179, Pope Alexander III issued a decree vesting in the cardinals the sole right to elect a new pope.

During the next three centuries, cardinals gradually came to be regarded as being on a par with secular royalty. Their status as "princes of the church" was formally defined by Pope Leo X in 1514.

**Size Varied**

During this era, the size of the college of cardinals varied widely. Under Pope Alexander IV (1254-61) there were only seven cardinals. Pope Gregory XIII (1572-1585) enlarged the number to 76. Pope Sixtus V in 1586 fixed the number of cardinals at 70—a total which was never exceeded until Pope John XXIII raised it to 85. (Three of the cardinals have died since then, reducing the total to 82.)

The cardinals choose the pope, and the pope chooses the cardinals. New cardinals are named first at a secret consistory (the term consistory is applied to any formal meeting of the cardinals with the pope). Then they are inducted at a colorful public consistory at which they receive red hats.

The red hats which have become synonymous with the rank of cardinal have low crowns and very broad brims, from which hang 15 tassels. They are bright red.

**Working Clothes**  
A cardinal after his induction wears a scarlet biretta (three-peaked clerical cap) or a scarlet zucchetto (skull cap). Many people have the erroneous impression that these familiar headpieces are "red hats" but to the cardinals who wear them they are

"working clothes" rather than crowns.

Forty-five of the 82 present cardinals were created by Pope John XXIII. In addition to expanding the college, he ended the traditional Italian dominance. Only 28 of the present cardinals are Italians.

The other 54 come from 30 different countries, with France supplying eight, Spain seven, the United States five, Germany three, Brazil three, Portugal two, Canada two, Argentina two, and 22 other

countries one each.

They range in age from 49 (Cardinal Ricketts of Peru) to 91 (Cardinal Morano of Italy). The median age is 74.

There is no canon law which says the cardinals must elevate one of their own number to the papacy. Theoretically, any male Catholic who has reached the age of reason, even a layman, might be elected pope. In actual practice, however, the pope has come from the college of cardinals in every election since 1378.

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