



## Justice Van Devanter

A spectator entering the hearing room of the new Supreme Court building in Washington finds his eyes naturally gravitating to the centrally-placed, elegantly-bearded figure of Charles Evans Hughes. As his focus widens, he notices sitting immediately to the right of the Chief Justice a gaunt-faced old man with a prominent nose and a bald head fringed only faintly with silver white hair.

This is 77-year-old Mr. Justice Willis Van Devanter. He owes his honored position at Hughes' right to the fact that his term on the high bench has been longer than that of any of his contemporaries. His 27 years of service allow him the title of "senior justice." From point of age he is younger than only one of his associates, the 80-year-old liberal, Louis Dembitz Brandeis.

Because of James Clark McReynolds' ringing and inevitable "No" in all New Deal test cases, Van Devanter is not quite the arch-conservative of the Court. He has upheld one small piece of the New Deal, the right of the Tennessee Valley Authority to sell Wilson Dam power. In that case he joined his best friend, Pierce Butler, and British-born George Sutherland in voting in favor of the Roosevelt administration for the first time.

Of all the conservative justices, Van Devanter is perhaps the most esteemed. When Washington columnists Drew Pearson and Robert S. Allen wrote their questionably accurate and somewhat malicious Supreme Court book, "The Nine Old Men," they were forced to fall in with the common agreement that Van Devanter "is one of the ablest members of the Court and one of its hardest workers."

Veteran judge and erstwhile college professor, Van Devanter probably knows more about the particulars of law than his colleagues. When justices disagree on matters of jurisdiction, his opinion is final. Finally, when Congress is framing laws which may af-

## Justice Van Devanter

fect Supreme Court procedure, Van Devanter becomes the link between the Court and the Congressional committees in charge of such legislation.

Precise and fluent of tongue, he is one of the clearest speakers on the bench. His keen mind has served to untangle for his associates many an involved legal argument. When lawyers themselves become lost in the complexities of the cases they are presenting, the senior justice often leans forward from his chair to straighten them out.

When it comes to writing opinions, however, Van Devanter is a notoriously weak sister. In 1933 he wrote nine decisions, in 1934 three. In 1935 his score was zero. Since the court opened last fall, his average has picked up again with an opinion a month.

This strange failing comes about not through any laziness on the senior justice's part, but because of what John Chamberlain of Fortune magazine once chose to call a "neurotic pen." Writing for him seems to be sheer torture. Once finished, his opinions are clear and readable but they require a disproportionately long time for preparation.

Van Devanter's littlest known role is that of peace-maker. When long argument ruffles feelings among members of the court, it is always the dignified Van Devanter who makes evening calls at the homes of the justices to soothe injured sensibilities.

True to his outward appearance of cold, Olympian calm, Van Devanter has managed to lead a smooth, uniformly successful life against backgrounds as widely varied as those of the sleepy middle west and the brawling, post-pioneer period of Wyoming.

He was born two years before the Civil war in the dusty little town of Marion, Indiana. His father was a local attorney.

After an ordinary childhood marked only by exceptional grades in school, young Willis graduated from Indiana Asbury College (now DePauw University) in 1878 and went off that fall to the law school of Cincinnati University. Three years later he was back in Marion to fulfill two ambitions of long standing. The first he achieved by joining his father in the practice of law, the second by marrying Dollie Burhans, a childhood sweetheart.

Two years before, however, Willis had waved a melancholy goodbye to a sister who had married a young lawyer from the territory of Wyoming. When brother-in-law John Lacey wrote back increasingly enthusiastic accounts of opportunities in the new country, Van Devanter and his wife finally headed for Cheyenne.

Wyoming in 1884 was a territory with nearly the area of the British Isles and little or no reputation for law and order. Its rough-and-ready population of American settlers fought lustily to claim the territory's free land.

Land-grabbers, claim-jumpers and cattle rustlers, however, only provided a colorful background for the dicta-

### Justice Van Devanter

torial and sometimes unscrupulous activities of the Union Pacific railroad of that day. This company set at its own pretty figures freight rates, the price of cattle, the price of grain. It had already received prodigious land grants from the government and did not hesitate to acquire and sell more acres at the expense of ordinary squatters and claim stakers.

Van Devanter rose rapidly. He early identified himself with two of the big men of the territory, Republicans Francis E. Warren and Clarence D. Clark. At the age of 30 he was appointed by Republican President Benjamin Harrison of his home state of Indiana to act as Chief Justice of the Wyoming Supreme Court.

Two more years firmly established the Hoosier's reputation. In 1890 he resigned from the bench to form with his brother-in-law the firm of Lacey & Van Devanter. Their chief client was the Union Pacific Company, whom they aided in the work of thrusting out all other claimants for valuable coal and grazing lands.

Simultaneously Van Devanter got his finger into the political pie of Wyoming. Two years after the territory became a state in 1890 he became chairman of its Republican committee and four years later its representative on the national committee.

It was as a Republican that he first went to Washington, but in the year of the Spanish-American war he began to increase his legal prestige still further by teaching at the city's George Washington University. An old friend, Warren of Wyoming, now a U. S. Senator and a power in the capital, got him appointed as Assistant Attorney General in charge of Public Lands in 1900. Three years later the senator boosted his friend again by helping to obtain for him an appointment as judge of the Eighth Federal Circuit Court of Appeals, sitting in St. Paul and St. Louis.

In 1910 another old Wyoming friend, Senator Clark, chairman of the powerful Senate Judiciary Committee, was influential in getting Van Devanter his final promotion. In December of that year, the Indianan was appointed to the Supreme Court by President William H. Taft.

Since then there has been no question about Justice Van Devanter's political tendencies. For nearly 30 years he had been a Republican. His appointment to the highest tribunal in the land by a Republican president did not change him. His early experiences in the unorganized and often lawless life of the West left no mark of liberalism on him.

He has constantly championed higher valuation of railroad and other utility properties. In states which regulate such utilities, this has the effect of increasing allowable profit of corporations which operate in the service of the public. On several occasions he has denied to the states the right to tax or otherwise control particular public utilities.

Van Devanter was unpopular with Democrats long before the New Deal

## Justice Van Devanter

test cases. His most famous opinion, however, in which he upheld the constitutionality of the 18th Amendment, had no partisan implications.

When his name went up for Senate confirmation in 1910, William Jennings Bryan issued a statement assailing the justice on the grounds that he had twice refused to step down from the bench in cases which involved the Union Pacific, his old client. In both instances the Federal court of which he was a member had returned decisions in favor of the railroad.

Despite the fact that his health has been uncertain in recent years, Van Devanter has given no indication that he will resign. On his 77th birthday last April 17 he said: "Maybe I will and maybe I won't."

Never robust since the shock of his wife's death in 1934, the senior justice nevertheless leads an active life for a man of his age. In Wyoming days he was an enthusiastic horseman and sometimes a hunter of grizzly bears. Now on Sundays when the weather is good, he makes a full, 18-hole tour of the pine-flanked fairways of Washington's exclusive Burning Tree Golf Club with Mr. Justice Pierce Butler. On other occasions he goes duck-hunting in Virginia with the Rev. ZeBarney Phillips, chaplain of the United States Senate.

One of these hunting trips last December resulted in wide and ridiculous publicity for the justice, when the Rev. Phillips revealed that Van Devanter had been admonished by a Federal deputy game warden for not having a \$1 Federal stamp on his hunting license. Van Devanter, it developed, had neither a stamp nor any idea that one was necessary.

Some years ago he acquired a farm in the hills of Maryland near Ellicott City, halfway between Baltimore and the capital. This estate is managed by one of his two sons who, like his father, is not particularly hale. Another son is an investment counselor in Washington.

Van Devanter maintains both his Washington residence and office in an apartment house on swanky Connecticut Avenue where Mr. Justice Cardozo also lives. Van Devanter's suite, however, is at the opposite end of the building from that of his pronouncedly liberal colleague.

Washington, seldom without a story about one of the justices, has its latest on Van Devanter. When someone asked him what he thought of the gossipy book, "The Nine Old Men," the justice is reputed to have deprecated the rather uncomplimentary sketch of him which appeared in one chapter. But, he added: "There's some good stuff in it about the other fellows."