chapters: Circumstantial Proof, which analyzes the nature of relevancy, Character, Similarity and Other Inferences. The last named chapter includes a discussion of the evidentiary implications arising from financial condition, insurance, the making of repairs, alibis, motive, intent and mental and physical condition. The chapters contained in Title V, The Witness, may perhaps prove to be those most frequently used since it is here that a simple and comprehensible, yet completely thorough treatment of the Dead Man's Statute can be found. Other chapters in this title deal with the examination of witnesses, lay and expert opinions and the impeachment of the witness. Title VI, entitled Privileges, covers not only those which are more commonly known, such as the attorney-client, physician-patient and marital privileges, but also those relating to information in the possession of public officials, trade secrets and the right of a witness not to disclose his vote at an election. Eleven chapters of the book are devoted to the hearsay rule and its many exceptions, all of which are placed under Title VII, while the last title discusses Judicial Notice, Burden of Proof and Presumptions.

Dr. Fisch's latest work will be invaluable to the legal profession and will eventually acquire a favored position on the desk of both legal practitioner and student. Equally, if not more significant, however, is the effect that its challenging recommendations for reform will undoubtedly exert upon the shape of the law in days to come.

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**Douglas of the Supreme Court.** Edited by VERN COUNTRYMAN. Garden City: Doubleday & Co. 1959. Pp. 401. $5.95.

"If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. Were an opinion a personal possession of no value except to the owner; if to be obstructed in the enjoyment of it were simply a private injury, it would make some difference whether the injury was inflicted only on a few persons or on many. But the peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error." Thus spoke John Stuart Mill in words that time has made classic. A more concise statement of the civil libertian philosophy of Mr. Justice William O. Douglas is hardly imaginable. It has been his consistent refusal in the Supreme Court to compromise the Bill of Rights in the face of strong political winds from the Right that has given new faith to the weak, the oppressed and the despised.

De Tocqueville noticed a tendency among Americans to prolong discussion of controversial issues. Those who ventured from this road of conformity might

well have subjected themselves to ostracism which would have known no limitations in one's personal life. Mr. Vern Countryman's *Douglas of the Supreme Court* illustrates this theme building itself into a powerful crescendo in the early 1950's when the inquisitory witch hunts and test oaths were revived. A glance at history should have enlightened us. The Alien and Sedition Acts and the hysteria during World War I were ample evidence of the folly of subordinating the rights of the individual in the name of security. Unfortunately, during the purge of the "disloyal," history did not seem to be of much value.

Mr. Justice Douglas' opinions bear witness to his ceaseless opposition to the progressive erosion of our civil liberties. He, along with Mr. Justice Black, have joined in numerous dissents where they have felt that the guarantees of the Bill of Rights were being weakened. Justice Douglas has accepted Justice Black's theory that the 14th Amendment's due process clause makes the Bill of Rights applicable to the states; the majority of the Court has never accepted this interpretation. However, quite often minority opinions of yesterday have become the majority opinions of today. Such sometimes has been the case with the Douglas-Black dissents in the Warren Court.

Mr. Countryman, one-time law clerk to Justice Douglas, has done an admirable job in gathering together and editing, one hundred sixty-nine of Justice Douglas' most important opinions and in writing an interesting biographical sketch. The opinions are exceedingly diverse, illustrating Justice Douglas' early interests in corporate law as well as his concern about the punishment of German and Japanese war criminals.

Few cases attracted more world wide attention than that of Julius and Ethel Rosenberg, who were convicted for violating the Espionage Act by conspiring to transfer secrets into the hands of the Soviet Union.[1] The trial judge sentenced them to death. The Rosenbergs apparently had exhausted all legal remedies in their search for clemency when, shortly before the date of execution, a new point of law was brought to the attention of Justice Douglas. Its novelty consisted in its contention that the Atomic Energy Act of 1946 had, in this case, superseded the Espionage Act, and that under this law death could not be imposed without the jury's recommendation. The jury had not recommended death for the Rosenbergs. Justice Douglas concluded that a substantial question had been raised, and consequently granted the stay. After only a few hours of deliberating, this stay was overruled by a majority of the Court. Justices Black and Frankfurter dissented, protesting such unseemly haste. Manifesting his characteristic vigor and courage, Justice Douglas wrote of the results of his legal research.

> Here the trial court was without jurisdiction to impose the death penalty, since the jury had not recommended it. Before the present argument I knew only that the question was serious and substantial. Now I am sure of the answer. I know deep in my heart that I am right on the law. Knowing that, my duty is clear.

*Beauharnais v. Illinois*[2] is included in the chapter, "Liberty," and serves as a vivid paragon of the stresses and conflicts that may be involved in First

[1] Rosenberg v. United States, 346 U.S. 273 (1953).
[2] 343 U.S. 250 (1952).

Amendment cases. Defendant was President of the White Circle League and distributed leaflets, the language of which was inflammatory and couched in terms of hatred for the Negro, strongly calling upon white people to stand fast against him. Defendant was indicted and convicted under an Illinois group libel law and the Supreme Court affirmed. They refused to apply the "clear and present danger" test, as such speech, in their opinion, was not constitutionally protected. Justice Douglas, dissenting, admonished the Court for its deliberate acquiescence to the control of unpopular groups—". . . a philosophy at war with the First Amendment. . . ." His line of reasoning was clear:

> Today a white man stands convicted for protesting in unseemly language against our decision invalidating restrictive covenants. Tomorrow a Negro will be hailed before a court for denouncing a lynch law in heated terms.

Perhaps the only detraction from Mr. Countryman's book is that his first chapter, "The Economy," includes far too much on corporate law and patents for the layman's digestive tract. Presumably, the editor is attempting to reach the general public, but such cases may discourage the non-lawyer from legal reading. However, there has been a generous inclusion of cases that cannot but stimulate the intellectual appetite and cause one to reflect upon a multitude of problems that now surround us. Mr. Countryman has given the reader an opportunity to view a Supreme Court justice at work who truly can be said to be in the Holmes-Brandeis tradition. This tradition values adventurous thinking in preference to suppression of any sort, and follows a faith in the individual to eventually find the path which is most correct. It would rather have the mistaken experience their mistakes, as perhaps in the fashion of Dante's *Inferno,* than impose silence.

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