

Ex-Justice Otis, court's 'lone wolf,' dies

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Minnesota Supreme Court Justice James Cornish Otis Jr. would have been quite proud to hear the terms now used by colleagues to describe his effect on the state's highest court.

He was often the only dissenting vote in cases involving controversial issues, which led a current justice to call him "the lone wolf crying in the night."

Before a woman had been appointed to the bench, Otis was dubbed the Supreme Court's "feminist" because of his passion and insight for those whose rights were ignored.

But his 21-year career may be best known for the writing of the decision in the Reserve Mining Co. case, in which the court ruled that taconite tailings that the company had been dumping into Lake Superior could be deposited inland.

Otis, 80, died of pneumonia Monday at his home in St. Paul. He had been fighting brain cancer since returning from a walking tour of Norway in July.

"He had the uncanny judgment about what's unfair," said Walter Rogosheske, a close friend who served with Otis on the court for 20 years. "If there was one appellate court judge I was going to be associated with, he would be it."

Otis came to the Supreme Court in 1961, one of three younger judges appointed by Gov. Elmer L. Andersen. His depth of experience, which came from serving

as a trial lawyer and a municipal and district judge, was unique for a Supreme Court justice, said former Chief Justice Robert Sheran.

Many of his dissenting opinions were unpopular, even with his fellow justices. In 1970 he was the only member to dissent when the court upheld the conviction of two bookstore clerks in St. Paul for selling what the majority called "filth for the sake of filth." Otis believed that the greater issue of censorship was at stake.

In a case that gained national attention, he was the lone dissenter again when the court upheld the conviction of a young man arrested at the University of Minnesota for possession of a microscopic 1/2,800th of an ounce of marijuana. The Legislature later reduced the penalty for possession of small amounts of the drug.

"He was very outspoken and uncompromising when it came to the matter of discrimination or the rights of individuals," Sheran said. "That really set him off."

In the Reserve Mining case, the court approved construction of a tailings basin at the Milepost 7 site rather than at an alternative one that Otis said would destroy part of the Superior National Forest.

Justice Rosalie Wahl said she lost one of her greatest friends on the court when Otis retired in 1982. They were often the only dissenters on cases, such as the one that upheld a law allowing police

officers to shoot to kill fleeing felons, regardless of the danger the shooting might create.

"I loved to read his opinions, which were magnificent," she said.

Many of his dissent opinions would center on the issue of prior convictions in criminal cases. "He believed it was unjust to taint a defendant by dredging up past criminality," she said.

Born in St. Paul, Otis earned his bachelor's degree from Yale University and law degree from the University of Minnesota. He wanted to be a minister, but was pulled into law by a family of lawyers going back to his great-grandfather. He became a partner in the firm of Otis, Faricy, Burger and Moore in St. Paul, which was founded by his grandfather in 1857. He spent about 10 years there working with his father, James, president of the Minnesota State Bar Association, his three brothers and Warren Burger, who later became chief justice of the United States.

Otis was elected a municipal judge in St. Paul, serving a six-year stint that he described as "being down in the pits." In 1954 he was appointed a Ramsey County district judge, replacing his uncle, Kenneth Brill, who had died.

After his initial appointment to the Supreme Court, Otis was elected to two terms before he retired in 1982.

His son Todd, a former legislator and chairman of the DFL Party, said his father's belief in public service got him involved in politics. Although the senior Otis fancied himself a Republican, he

voted along Democratic lines, his son said.

He was happiest outdoors and loved his cabin in Wisconsin, Todd Otis said. He was still skiing as late as last month.

Otis was a board member of Hamline University and helped start its Law School. He was a board member of the Nature Conservancy and the YMCA in downtown St. Paul, and was a member of the American Law Institute and several governor's committees.

He was president of the St. Paul Exchange Club, Minnesota Municipal Judges Association, a trustee of Children's Hospital in St. Paul and director of the St. Paul Area Boy Scouts of America, St. Paul Urban League and Wilder Foundation.

His first marriage, to Louise Nichols, ended in divorce.

Besides his son Todd, of St. Paul, Otis is survived by his wife, Constance; a daughter, Emily Wurtz, of Chevy Chase, Md., and a son, James, of Minneapolis. Arrangements for a memorial service are pending.