PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF JUSTICE DOUGLAS*

TUESDAY, NOVEMBER 18, 1980

Present: CHIEF JUSTICE BURGER, JUSTICE BRENNAN, JUSTICE STEWART, JUSTICE WHITE, JUSTICE MARSHALL, JUSTICE BLACKMUN, JUSTICE POWELL, and JUSTICE STEVENS.

THE CHIEF JUSTICE said:

The Court is in special session this afternoon to receive the Resolutions of the Bar of the Supreme Court in tribute to the late Justice William O. Douglas.

Mr. Solicitor General McCree addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

The members of the Bar of the Supreme Court of the United States meet today to record our respect and admiration for William Orville Douglas, who served with the greatest distinction as Associate Justice for 36 years and 6 months, longer than any Justice in the history of the Court. In these Resolutions, we wish to memorialize his career and contributions to the law and the jurisprudence of this Court.

I

Justice Douglas was appointed to the Court by President

*Justice Douglas, who retired from active service on the Court effective November 12, 1975 (423 U. S. IV, VII), died in Washington, D. C., on January 19, 1980 (444 U. S. III, VII). Services were held at the National Presbyterian Church, Washington, D. C., prior to his interment in Arlington National Cemetery on January 23, 1980.

Franklin D. Roosevelt to succeed Justice Brandeis. He was sworn in by Chief Justice Hughes on April 17, 1939. He was barely 40 years old.

Douglas' birthplace was the small town of Maine, Minnesota, but his early life, through college, was spent in the State of Washington. His family roots were in Vermont and Nova Scotia; his early life was ruggedly Western and storybook American. His father, a Presbyterian minister, died when Douglas was only five years old, and the young Douglas' life was marked by the hard work necessitated by inadequate family finances.

His college experience was at Whitman College in his home state. Despite the lack of funds, he made his way to Columbia University in New York City and managed to support himself by a variety of jobs. He received his LL. B. degree from Columbia in 1925, graduating second in his class. From 1925 to 1927, he was an associate in the prestigious New York law firm headed by Paul D. Cravath; and it is typical of Douglas that at the same time he was engaged in satisfying the relentless demands of that position, he was also teaching at Columbia Law School.

The brief period of law practice in the Cravath firm was not happy for Douglas; but his subsequent career, including his work as a Justice of this Court, provides evidence that it honed his skills at an early date and furnished a focus for his initial interests in the law. He soon resigned his position at Cravath's and went back to his native Yakima, Washington; but after a brief and unsatisfactory experiment in practicing small-town law, Douglas returned to New York City and in 1927 became an assistant professor on the Columbia Law School staff.

His field of interest was business law, reflecting the insecurities of his precarious economic background; but even in this apparently pedestrian area, he soon demonstrated that safe and familiar paths were not for him. Among his fellow faculty members were some restless men of remarkable intellectual power, originality and daring who were profoundly

dissatisfied with the conventional "trade-school" character of law school research and teaching. They demanded that research and teaching at the law school should be oriented with the materials of life; that they be grounded in the actual problems of society; and that the resources of other disciplines should be utilized in the study and formulation of the law. As Douglas describes the movement, the rebels were "dubbed the leaders of 'sociological jurisprudence.'"[1]

Douglas quickly allied himself with this group, and when in the spring of 1928, the President of Columbia designated a new Dean of the Law School who was unacceptable to them, Douglas, along with some of his colleagues, resigned from the faculty, and Douglas accepted an offer to join the faculty of the Yale Law School as assistant professor. The young Robert Hutchins had become Dean of that school and had commenced its revitalization along lines strikingly similar to those which had been advocated by the Columbia insurgents.

Douglas' career at Yale remained solidly rooted in business law—but with a vast difference from the conventional approach to the study and teaching of the subject. As he did throughout his working life—at the Securities and Exchange Commission and on this Court—he sought, first and last, to find the realities of problems and their social, economic and human impact. He was neither pro-business nor anti-business; neither pro-establishment nor anti-establishment. He sought the facts; he pursued reality; his guiding objective was to sharpen the tools of the law and the art of the lawyer so that they would relate to the real world, and to criticize and mold them so that they would serve their conceded purposes: fairness, honesty and responsiveness. To proceed from abstract principle to practice, from doctrine to decision, was anathema to the young professor.

His output was prodigious. With collaborators, he published a series of books completely reorganizing the teaching and study of business law. They included business as well

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[1] Go East, Young Man, p. 160.

as legal materials, assembled and organized on a "functional" basis. He wrote and published scholarly articles and book reviews; he originated and pursued, with the collaboration of a sociologist, elaborate, detailed field investigations of business failures in a number of jurisdictions; in 1929–1932, he conducted a study of bankruptcies for the Yale Institute of Human Relations and the Department of Commerce; in his never-ending search for the materials of real life in his chosen field, he instituted a collaborative teaching and research program with the Harvard Business School.

It is interesting, in view of his later career, that Douglas' prodigious output and his intense activity during these years, including years of social and political ferment in the Nation, were substantially devoid of any indication of interest in professional matters or social problems outside of his chosen field of business affairs.

II

By 1933, Douglas' reputation as an innovative and brillant expert in the field of business was firmly established. It was inevitable, therefore, that in the early days of the New Deal he would receive a call to Washington. In 1934, at the request of SEC Chairman Joseph P. Kennedy, Douglas became Director of the SEC's study of reorganization and protective committees. In his hands, this study became a thorough inquest into the aftermath of large corporate failures. It furnished the dramatic foundation for Douglas' subsequent achievements at the SEC and established his reputation as a formidable and effective figure in Franklin Roosevelt's government.[2]

In January 1936, at age 37, he was appointed a Commissioner of the SEC. Promptly, in a number of speeches, he began to call for reforms in the securities markets and the investment banking community. In September 1937, he was appointed Chairman of the SEC, succeeding James Landis.

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[2] See Securities and Exchange Commission, "Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees" (U. S. G. P. O., 1937–38).

He served in that post for 18 months, until his appointment as Associate Justice. Within a few weeks after assuming the chairmanship of the SEC, he launched his remarkable effort to reorganize the New York Stock Exchange, a reform which he regarded as the core requirement of raising the standards of the financial markets. He prosecuted the program with vigor, daring and astuteness. Aided by events, chief of which was the Richard Whitney scandal, Douglas achieved remarkable success.

In this struggle, as throughout his career, Douglas evidenced the profound influence of Justice Brandeis' philosophy, a philosophy which articulated conceptions that Douglas, as a small-town Westerner, found to be entirely congenial. His SEC career demonstrated Douglas' restless refusal to confine his work within established patterns which did not meet the rigorous standards that seemed to him to be called for; and it evidenced his independence, relentless courage and fierce dedication to achievement of the objectives that he formulated. He was not a follower; he regarded the existing state of affairs not as a prescription for comfortable continuity, but as a summons for improvement. In deciding upon objectives and plotting his course, he sought neither collaborators nor participants; rather, after cold and surgical analysis, he independently formulated his positions and struck out boldly to achieve his goal. The extraordinary fact, however, is that he coupled these highly individualistic traits with shrewd, practical sense which enabled him to achieve, to a remarkable degree, acceptance of his ideas and implementation of his programs. They were frequently programs which initially appeared impossibly visionary; but his political and practical acumen, coupled with his burning intensity and ability to enlist loyal support, enabled him to win a surprising degree of acceptance.

In his chosen field, Douglas was a superb technician. His practical experience was limited; but the cutting edge of his mind, his insistence upon the assembly of fact, fact, fact; and his extraordinary capacity for work, enabled him to master

the intricacies of corporate finance and securities trading and the dynamics and mechanics of business and finance. But to him, learning was not an invitation to acceptance; it was an avenue to questioning, to challenge, and a summons to reform practices and institutions to meet his stern standards of upright conduct and efficient result.

III

Douglas' great career as SEC Chairman ended when, in April 1939, he began his long career as an Associate Justice of this Court. There was little reason in his career to that date to anticipate that he would soon become a leader in the vindication of human rights. There was every reason to predict that he would become the Court's expert in cases involving business, and that, in this role, he would insist upon strict standards of probity, fairness and responsibility. He quickly demonstrated the latter.

During his first full term on the bench, he wrote for the Court in *Case* v. *Los Angeles Lumber Co.,* 308 U. S. 106 (1939), to hold that reorganization plans under the Bankruptcy Act for financially distressed corporations must comply with an "absolute priority" rule. Each successive class of creditors and stockholders, in the order and amount of their liquidation priorities, must be fully compensated in new securities of the reorganized corporation before anything could be given to a junior class. This was their contract among themselves and with the corporation; and fair dealing demanded that the contract be honored.[3]

In succeeding terms of the Court, Douglas wrote many opinions for the Court and a number of dissents in cases

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[3] In two cases in subsequent terms, Douglas characteristically buttressed the "absolute priority" rule by insisting upon standards for valuation which provided some assurance that the new distribution of shares and interests to stockholders and creditors would be realistic—that is, based upon prospective earnings. *Consolidated Rock Products Co.* v. *DuBois,* 312 U. S. 510, 525–526 (1941); *Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.,* 318 U. S. 523, 540 (1943).

involving business affairs. In all of them, his technical proficiency is evident; but successively, his opinions in business cases demonstrated the widening of his horizons. More and more, his opinions for the Court and in dissent referred to the writings and philosophy of Justice Brandeis, and included not only an insistence upon fair dealing, strict performance of contract obligations, and a concern for the interests of investors, but also an evolving tendency to take into account more general public interests. For example, his landmark opinion for the Court in *Federal Power Commission* v. *Hope Natural Gas Co.,* 320 U. S. 591 (1944), substantially adopted the Brandeis-Holmes view of ratemaking, and he insisted that "the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests."

His memorable dissent in *United States* v. *Columbia Steel Co.,* 334 U. S. 495, 535–536 (1948), is a Brandeisian essay on the subject of bigness. His early opinion in *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. 150, 221 (1940), holding that a combination to fix prices was illegal per se under the Sherman Act, similarly exhibited his aversion to the use of aggregated power and his commitment to the Brandeisian ideal of independent, competitive business entities.

Again, in majority and dissenting opinions, announcing a theme which he had advocated in his days as a law school professor, he demonstrated that he would strictly apply statutory principles to inhibit or discourage the extension of the control of the "money trust" over American business—a theme for which he acknowledged indebtedness to Justice Brandeis.[4]

The emergence of Justice Douglas as the great civil libertarian is a fascinating story. When he first became a member of the Court, his colleagues were Chief Justice Hughes and Justices McReynolds, Butler, Stone, Roberts, Black, Reed and Frankfurter. In 1940, Butler was succeeded by

[4] See Directors Who Do Not Direct, 47 Harv. L. Rev. 1305 (1934); *United States* v. *W. T. Grant Co.,* 345 U. S. 629, 636 (1953) (dissent); *Blau* v. *Lehman,* 368 U. S. 403, 419–420 (1962) (dissent).

Frank Murphy; in 1941, McReynolds and Chief Justice Hughes were succeeded by Roosevelt's nominees, Byrnes and Jackson; and in 1943, Rutledge was appointed to succeed Justice Byrnes who had resigned after a short tenure. Douglas' longest association had been with Justice Frankfurter, dating to the days when they were law teachers; but their friendly personal relationship had been colored by the strong differences between the Young Turks of the Yale Law School and the less ebullient law faculty at Harvard, led by Frankfurter. For this reason, and perhaps more importantly, by reason of temperament and background, it quickly occurred that Douglas' closest association among his colleagues was not with Justice Frankfurter, but with Hugo Black. Douglas and Black early found common ground which they generally occupied until the 1960's when their positions on significant civil rights issues diverged.

Douglas has been quoted as saying that it takes a dozen years on the Court for a Justice's judicial philosophy to mature. There is no evidence that his period of maturation was so long, but in his early years on the Court, his votes in several civil rights cases were later to be regretted and repudiated by him. An early test came in the *Gobitis* case in 1940,[5] a case challenging the expulsion from public school of two children of the Jehovah's Witnesses sect for refusal to comply with a flag-salute ordinance. The Court rejected the challenge and sustained the ordinance. Only Justice Harlan F. Stone dissented. Frankfurter wrote the Court's opinion and Douglas, as well as Justices Black, Murphy and Reed—the other Roosevelt appointees—joined. Two years later, in *Jones* v. *City of Opelika,*[6] in which the Court held that the imposition upon Jehovah's Witnesses of a licensing fee for solicitation sales of their literature was constitutional, Black, Douglas and Murphy, dissenting, confessed that *Gobitis* was wrongly decided. Both *Gobitis* and *Opelika,* in their view,

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[5] *Minersville School District* v. *Gobitis,* 310 U. S. 586 (1940).

[6] 316 U. S. 584 (1942).

wrongly approved a "device" which "tends to suppress the free exercise of a religion practiced by a minority group." [7]

Similarly, in 1942, Justice Douglas joined in a decision which, in effect, reaffirmed the ruling in *Olmstead* v. *United States,* 277 U. S. 438 (1928), that warrantless wiretapping did not violate the Fourth Amendment.[8] Douglas agreed with the majority, which included Justice Black, despite the fact that Chief Justice Stone and Justices Frankfurter and Murphy dissented and indicated their readiness to overrule *Olmstead.*[9]

These early votes, which are anomalous in view of Justice Douglas' later positions, may be explained on a variety of possible grounds: New Justices often are inclined to accept the views of the majority in areas in which they do not consider themselves expert; Douglas' views in the area had not fully developed; and he was following the lead of Justice Black and other Justices whom he respected.

Douglas' votes in the Japanese internment cases, which also appear somewhat anomalous in view of his subsequent history, may have a different or additional basis. In 1943, he voted with the majority in condoning the indiscriminate internment of Japanese; a year later he joined Justice Black's majority opinion sanctioning exclusion of a Japanese from his home town in California. In his separate opinion in the 1943 case, he explained his vote: It was wartime; Pearl Harbor had been bombed; and Douglas was unwilling to "sit in judgment on the military requirements of that hour." [10]

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[7] *Id.*, at 623. In 1943, the Court reversed *Gobitis*. *West Virginia Board of Education* v. *Barnette,* 319 U. S. 624 (1943).

[8] *Goldman* v. *United States,* 316 U. S. 129 (1942) (use of detectaphone).

[9] In 1952, Douglas, in dissent, urged that both *Olmstead* and *Goldman* should be overruled. *On Lee* v. *United States,* 343 U. S. 747, 762 (1952). Fifteen years later, the Court accepted the views urged by Douglas in *On Lee*. *Katz* v. *United States,* 389 U. S. 347, 353 (1967).

[10] *Hirabayashi* v. *United States,* 320 U. S. 81, 106 (1943); *Korematsu* v. *United States,* 323 U. S. 214 (1944). He later characterized the decisions in the two cases as "extreme"; and in 1944, in the *Endo* case, he

Soon, however, Justice Douglas found his stride and began the establishment of his position as an undeviating champion of individual rights. His conception of individual rights was comprehensive. As he ultimately formulated it, the "Blessings of Liberty" included not only physical security, but *"autonomous control over the development and expression of one's intellect, interests, tastes, and personality"* and *"freedom of choice in the basic decisions of one's life respecting marriage, divorce, procreation, contraception, and the education and upbringing of children."* [11] He maintained that all of these were sternly and broadly guaranteed by our Constitution and that the Court was their ultimate guardian; and he rejected what he regarded as the artificial and labored distinctions which could be drawn by nice analysis of the words of the Constitution or differentiations between the Constitution's mandates and prohibitions directed to the federal and state governments, respectively.

His insistence upon judicial action to vindicate this sweeping conception of constitutional guarantees met bitter opposition from members of the public who were opposed to the social, economic and political implications of Douglas' insistence upon pervasive individual rights, and from those who feared or challenged the unconventionality of his jurisprudence. But the time was appropriate for newly revealed constitutional values. Douglas' bold ideas were launched during the 1940's, 50's and 60's, at a time of ferment and revolutionary change in societal mores. A wave of suppression, typified by Senator Joseph McCarthy, was eventually met and overwhelmed by a tide of insistence upon individual rights and individual permissiveness; the pressures of egalitarianism, with its accompanying insistence upon the divine right of each individual, were enormous; and Douglas' ex-

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wrote for the Court that the Government could not continue to detain a Japanese-American after her loyalty had been established. *Ex parte Endo,* 323 U. S. 283 (1944).

[11] Separate opinion concurring in *Roe* v. *Wade,* 410 U. S. 113 (1973), and *Doe* v. *Bolton,* 410 U. S. 179 (1973). 410 U. S., at 211.

alted conception found a ready and receptive constituency. It is perhaps this phenomenon of history—the fact that Douglas' positions coincided with vast social changes—rather than successive changes in the membership of the Court, that accounts for the remarkable degree to which his innovative views became accepted constitutional doctrine and national principle. It may be that Douglas' views would not have met with comprehensive acceptance by the Court if it had not been for changes in its membership; but it is equally likely that the succeeding Court would not have embraced the full measure of libertarian principles if it had not been for the pioneering of Justice Douglas.

Douglas was largely responsible for the establishment of the right of privacy as a distinct value protected by the Bill of Rights. Literalists may complain that the Constitution does not refer to a "right of privacy"; but to Douglas, principle and essence are controlling, and the "right of privacy" is a statement of the essence of the specific constitutional guarantees. Certainly, its recognition as a distinct right is useful and seminal. It is a dramatic embodiment of Douglas' insistence that our Constitution's protection of individual rights is comprehensive and is not to be confined to a narrow literal parsing of its words.

In 1952, the Court held that a municipal transit company could broadcast radio programs, including commercial announcements, on its buses and streetcars. In his dissenting opinion, Douglas asserted that the right to "liberty" as used in the Fifth Amendment, "mean[s] more than freedom from unlawful governmental restraint; it must include privacy as well . . . . The right to be let alone is indeed the beginning of all freedom." [12] This is obviously a doctrine of vast implications, incorporating, by a stroke of creative conceptualism, the comprehensive view of constitutionally guaranteed liberties which Douglas was later to formulate.[13]

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[12] *Public Utilities Commission* v. *Pollak,* 343 U. S. 451, 467 (1952).

[13] Concurring opinion in *Roe* v. *Wade* and *Doe* v. *Bolton, supra,* n. 11.

Douglas was later to invoke the principle of privacy in a variety of circumstances dealing with governmental actions affecting individuals.[14] The boldest use of the "right" appeared in 1965, when Douglas wrote the opinion of the Court in *Griswold* v. *Connecticut,* 381 U. S. 479 (1965), which invalidated a Connecticut law forbidding the use of contraceptives. Douglas' opinion "for the Court" based the decision squarely upon the right of privacy. He argued that the right of privacy exists by necessary implication from specific provisions of the Constitution; that "its existence is necessary in making the express guarantees fully meaningful" (*id.,* at 483).[15] As concurring opinions in *Griswold* contended, the grounds for the Court's decision could have been formulated on a less enterprising basis; but the support which the Court's opinion provides for a distinct, constitutional right of privacy is significant. Using that newly articulated right as a specific instrument or as an aid to broaden the literal words of the Bill of Rights, the application of the Constitution's specific guarantees of individual liberties could be substantially expanded.

A kindred doctrinal innovation which Douglas propounded is the right to travel, a "right" which unlike the "right to privacy" had little or no antecedents in the Court's opinions. In 1941, the Court held that California's "Okie" law was an unconstitutional burden on commerce. Douglas concurred, but on the grounds that the right to travel was a guarantee of citizenship under the Fourteenth Amendment's privileges and immunities clause.[16] Twenty-seven years later, in

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[14] See, *e. g., Wyman* v. *James,* 400 U. S. 309, 326, 329 (1971), in which Douglas, in dissent, invokes the privacy of the home as demonstrating the unconstitutionality under the Fourth Amendment of inspection of a welfare recipient's house.

[15] He elaborated this proposition by a picturesque literary flight: that "specific guarantees in the Bill of Rights . . . have penumbras, formed by emanations from those guarantees that help give them life and substance" (381 U. S., at 484).

[16] *Edwards* v. *California,* 314 U. S. 160, 177 (1941).

Shapiro v. *Thompson*,[17] a majority of the Court recognized the right to travel as "fundamental" under the Fourteenth Amendment.

In a number of other instances, Justice Douglas had the satisfaction of participating in Court decisions adopting principles which he had first articulated in dissent. Conspicuous among these are decisions dealing with the scope of the right to counsel, as to which Douglas shared Justice Black's views. In *Crooker* v. *California,* 357 U. S. 433, 441 (1958), Douglas had dissented from a decision of the Court sustaining the conviction of a defendant on the basis of a confession made without counsel, after five or six hours of interrogation. In a concurring opinion in 1961, *Culombe* v. *Connecticut,* 367 U. S. 568, 637 (1961), he urged that the Court should accept the principle "that any accused—whether rich or poor—has the right to consult a lawyer before talking with the police."

Gradually, beginning with *Massiah* v. *United States,* 377 U. S. 201 (1964), and *Escobedo* v. *Illinois,* 378 U. S. 478 (1964), and culminating in *Miranda* v. *Arizona,* 384 U. S. 436 (1966), the Court adopted Justice Douglas' views on the matter as it did in many other areas: Once an individual is "taken into custody or otherwise deprived of his freeedom in any significant way," he must be advised of his Fifth Amendment right to be silent and of his Sixth Amendment right to counsel, by appointment of a lawyer by the state, if necessary; and if the person apprehended indicates that he wants an attorney, all interrogation "must cease until an attorney is present." [18]

Similary, Douglas, in 1942, joined Justice Black in dissent

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[17] 394 U. S. 618 (1969).

[18] 384 U. S., at 478–479, 474. See also Douglas' opinion for the Court in *Hamilton* v. *Alabama,* 368 U. S. 52, 54–55 (1961) (right to counsel at arraignment), and the Court's decision, in which Douglas joined, in *White* v. *Maryland,* 373 U. S. 59 (1963) (preliminary hearing in advance of arraignment is a "critical step in a criminal proceeding" at which defendant must have counsel).

from the Court's decision upholding a state conviction despite the denial of counsel at trial, *Betts* v. *Brady,* 316 U. S. 455, 474 (1942). More than 20 years later, they had the satisfaction of participating in the overruling of this decision in *Gideon* v. *Wainwright,* 372 U. S. 335 (1963).[19]

In 1951, Douglas alone noted his dissent from the Court's order affirming a decision upholding the Virginia poll tax, *Butler* v. *Thompson,* 341 U. S. 937 (1951). In 1966, he wrote the Court's opinion holding, under the equal protection clause, that a state could not impose a poll tax as a condition of voting. *Harper* v. *Virginia Board of Elections,* 383 U. S. 663 (1966).

Justice Douglas' opinions in the right to counsel cases, as in other cases where he alone or in conjunction with others expanded judicial enforcement of procedural rights in criminal cases, illuminate his characteristic approach. Typically, the cases involved indigents and the underprivileged; and to Douglas, their predicaments were a summons to close scrutiny of the process by which government imposed penalties upon them. It was the meaning, the essence of the situation presented, that to him was the essential premise from which conclusions followed.[20] By contrast, the approach of Justice Black, his colleague and collaborator for many years, was more conventional; Black was a strict constructionist of the words of the Constitution, who proceeded to conclusions drawn, by his lights, from carefully considered analysis of the meaning of the words of the Constitution. Students of the Constitution and the judicial process will find this difference in approach, coupled with a long-term—but not complete—coincidence of conclusions, a fruitful source of analysis and speculation.

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[19] *Cf.* Douglas' opinion for the Court in *Haley* v. *Ohio,* 332 U. S. 596 (1948) (confession of 15-year-old after ordeal of questioning without counsel).

[20] See his opinion for the Court in *Skinner* v. *Oklahoma ex rel. Williamson,* 316 U. S. 535 (1942), holding unconstitutional, as a violation of equal protection, the Oklahoma statute providing for compulsory sterilization of criminals after a third felony conviction.

This is not to say, however, that Douglas' pioneering represented departures from the precepts of the Constitution. The remarkable degree to which his conclusions were eventually adopted by the Court, and the fact that they have largely withstood the test of time, provide evidence of their harmony with our basic law. Indeed, it may be said that his preconceptions were those which animated our Constitution, and that his conclusions were immanent in that document. Nor can it be said that he was heedless of the need, commanded by the rule of law, to justify conclusions by doctrine. The point is that he did not hesitate to articulate, and proceed on the basis of, doctrines which he formulated, sometimes with piercing originality. The process, to him, was consistent with and mandated by the magnificent generality of the basic provisions of our Constitution and their essential purpose.

His intense insistence that the individual in confrontation with the power of the state must be accorded the fullest protection of the Constitution, is manifest in the votes that he cast as a member of this Court. He believed that the guarantees to the accused in criminal prosecutions were "not only a protection against conviction and prosecution but a safeguard of conscience and human dignity and freedom of expression as well." [21] And so, he strongly objected to the dilution of the Fifth Amendment's privilege against self-incrimination by requiring testimony where "transactional" or "use" immunity was granted.[22] The privilege is a fundamental barrier to state oppression, and a symbol and manifestation of the ultimate sovereignty of the individual, and Douglas fiercely opposed its diminution. Similarly, aware of Justice Brandeis' admonition that "in the development of our liberty insistence upon procedural regularity has been a large factor," [23] he opposed the narrow application of the Fourth

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[21] *Ullman* v. *United States,* 350 U. S. 422, 440, 445 (1956) (dissent).
[22] *Kastigar* v. *United States,* 406 U. S. 441, 466 (1972) (dissent).
[23] *Burdeau* v. *McDowell,* 256 U. S. 465, 477 (1921).

Amendment's prohibition of the invasion of the individual's domain by unreasonable searches and seizures.[24]

In the controversies involving the First Amendment, Justice Douglas established his position as an uncompromising advocate of the broadest interpretation of the freedoms of speech, the press and religion. Building on a view expressed by Justice Stone,[25] Douglas, along with Black, asserted that the First Amendment's freedoms were in a "preferred position" in our constitutional scheme; and they insisted that state as well as federal action infringing upon basic rights must be subjected to strict scrutiny.[26] Street orators denouncing the President;[27] racists uttering libelous abuse of blacks and abusively criticizing the Court itself;[28] Communists circulating radical propaganda[29]—all were entitled to the shield of the First Amendment. If their utterances provoked listeners to throw stones and bottles, it was the duty of the police to protect the speaker from the crowd and not vice versa.[30]

Douglas was troubled by the question whether this right to speak freely should be limited by the "clear and present danger" test. As early as 1949, he made clear his view that the danger must rise "far above public inconvenience, annoyance or unrest," *Terminiello,* 337 U. S., at 4. In 1957, he stated his own version of the test: that the First Amendment guarantee of freedom of expression is absolute and can be qualified only when the expression "is so closely brigaded with illegal action as to be an inseparable part of it." *Roth*

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[24] *E. g., McCray* v. *Illinois,* 386 U. S. 300, 314 (1967) (dissent); see also his eventual position on wiretapping and his views on the right to counsel, discussed above.

[25] *United States* v. *Carolene Products Co.,* 304 U. S. 144, 152, n. 4 (1938).

[26] See *Murdock* v. *Pennsylvania,* 319 U. S. 105 (1943); *Poulos* v. *New Hampshire,* 345 U. S. 395, 422 (1953) (dissent); *Terminiello* v. *Chicago,* 337 U. S. 1, 4 (1949).

[27] *Feiner* v. *New York,* 340 U. S. 315, 329 (1951) (dissent).

[28] *Beauharnais* v. *Illinois,* 343 U. S. 250, 284–287 (1952) (dissent).

[29] *Dennis* v. *United States,* 341 U. S. 494, 581, 589–590 (1951) (dissent).

[30] *Terminiello* v. *Chicago, supra.*

v. *United States,* 354 U. S. 476, 508, 514 (1957). Eventually, in 1969, he announced that, at least in time of peace, he had "great misgivings" about the "clear and present danger" test because he believed that it had been wrongly applied "by judges so wedded to the *status quo* that critical analysis made them nervous." *Brandenburg* v. *Ohio,* 395 U. S. 444, 454 (1969) (concurring).

Where the conflict between freedom and the societal interest in the avoidance of physical disorder is not presented, Douglas' view was absolute: "[t]he First Amendment is couched in absolute terms—freedom of speech shall not be abridged," *Beauharnais, supra,* note 28, at 285; "The matter is beyond the power of the legislature to regulate, control or condition," *Poulos, supra,* note 26, at 423. Censorship of movies or written material, in his judgment, is absolutely prohibited by the First Amendment.[31] Teachers may not be subjected to loyalty tests or dismissed for membership in alleged subversive organizations.[32] His belief in open advocacy and debate also induced in him an unwillingness to tolerate governmental actions which, in his view, shielded governmental action—even Presidential acts—from public scrutiny.[33]

In the 1960's, Douglas' broad view of the scope of First Amendment protection for the expression of views resulted in significant differences with Justice Black. Black refused to vote to invalidate a conviction under state trespass laws of students who demonstrated in front of a county jail where

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[31] *Byrne* v. *Karalexis,* 396 U. S. 976, 977 (1969) (dissent); *cf., Paris Adult Theatre I* v. *Slaton,* 413 U. S. 49, 70 (1973) (dissent); *Hannegan* v. *Esquire, Inc.,* 327 U. S. 146 (1946).

[32] *Adler* v. *Board of Education,* 342 U. S. 485, 508 (1952) (dissent).

[33] *E. g.,* he joined the Court's decision in the Pentagon papers case, *New York Times Co.* v. *United States,* 403 U. S. 713 (1971), and he regarded the Court's action, which he joined, approving a lower court order compelling President Nixon to surrender tape records of conversations, *United States* v. *Nixon,* 418 U. S. 683 (1974), as of great importance. See J. Simon, Independent Journey, The Life of William O. Douglas, 429 (1980).

some of their fellow protestors against segregation were incarcerated. Douglas dissented. *Adderley* v. *Florida,* 385 U. S. 39 (1966). Douglas' insistence that symbolic expression was equally entitled to protection with verbal expression was unacceptable to Justice Black in the 1960's. This was evident in Black's dissent from the Court's opinion, in which Douglas joined, holding that students could not be dismissed from a public school for wearing black armbands in class to protest the Vietnam war. *Tinker* v. *Des Moines Community School District,* 393 U. S. 503 (1969). And in *United States* v. *O'Brien,* 391 U. S. 367, 389 (1968), Douglas dissented from a Court decision in which Justice Black joined, sustaining a conviction for the burning of a draft card. Later, in *Brandenburg* v. *Ohio, supra,* at 450, Douglas, concurring, stated that the Court's decision in *O'Brien* "was not, with all respect, consistent with the First Amendment" (395 U. S., at 455); O'Brien's act, he said, was protected by the First Amendment as a "symbolic protest" (*id.,* at 456).

Black and Douglas, however, had never wavered in their solid resistance to the pressures of McCarthyism which were formidable in the loyalty cases. In 1951, the Court had held invalid the Attorney General's compilation, without notice or opportunity for rebuttal, of a list of subversive organizations affiliation with which was grounds for dismissal from federal employment under President Truman's executive order. *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U. S. 123 (1951). On the same day, by a four-to-four decision, the Court left standing the dismissal from government service of Dorothy Bailey on the basis of membership in organizations on the Attorney General's list and the undisclosed statement of anonymous informers.[34] Both Black and Douglas wrote separate, concurring opinions in the *Joint Anti-Fascist* case; Douglas' opinion is especially significant because he expressly criticized the result in the *Bailey* case which, he said, presents "an excellent illustration of how dan-

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[34] *Bailey* v. *Richardson,* 341 U. S. 918 (1951).

gerous a departure from our constitutional standards can be." 341 U. S., at 179–180.

Justice Douglas believed that the First Amendment established an impenetrable barrier between the government and religious establishments and beliefs. From the early years of his tenure as a Justice of this Court, he voted "no" as to religious instruction or prayer in public schools; [35] he voted "no" to government loan of textbooks to parochial schools; [36] and in 1970, he alone voted to strike down the tax exemption for property used solely for religious purposes.[37]

He believed that racial segregation was an evil and that the Court should be vigilant and resourceful in finding that segregation, by whatever means and wherever it occurred, in public or private places, violated the equal protection clause of the Fourteenth Amendment; [38] and he early and steadfastly insisted that laws burdening the right of suffrage to the prejudice of the underprivileged were constitutionally intolerable. See, *e. g., Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421 (1952).

In this area, as in all other matters affecting the liberty and dignity of the individual, history may well agree that Chief Justice Marshall's tribute to the Court over which he presided is applicable to Justice Douglas: that he "never sought to enlarge the judicial power beyond its proper bounds, nor feared to carry it to the fullest extent that duty required." [39]

Finally, as we survey the remarkable career of Justice Douglas, we acknowledge with gratitude and reverence his extraordinary contributions in other fields—in addition to the

[35] *Illinois ex rel. McCollum* v. *Board of Education of School Dist. No. 71, Champaign County, Ill.*, 333 U. S. 203 (1948); *Engel* v. *Vitale*, 370 U. S. 421 (1962).

[36] *Board of Education of Central School District No. 1* v. *Allen*, 392 U. S. 236, 254 (1968) (dissent).

[37] *Walz* v. *Tax Commission*, 397 U. S. 664, 700 (1970) (dissent).

[38] *E. g., Palmer* v. *Thompson*, 403 U. S. 217, 231 (1971) (dissent); *Moose Lodge No. 107* v. *Irvis*, 407 U. S. 163, 179 (1972) (dissent).

[39] Quoted in Justice Frankfurter's dissent, *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 668 (1943).

law—to the preservation and development of freedom in our Nation and to the evolution of constitutional principle. Our survey has been confined to Justice Douglas' career in the law. The sheer volume of his output during his 36 years on the Court is overwhelming; but it does not measure his activities during that time. It is an extraordinary fact that, simultaneously, he was in the vanguard of other great causes. He was a world traveler who, in a number of impressive publications, alerted the Nation to the problems and aspirations of the people of the less developed parts of our planet, which have become a central fact in the life of our Nation and the world. He was a prophet and pioneer with respect to environmental concerns; his activities and writings were of early and signal importance in developing programs for the protection of our forests, rivers, streams and mountains.

In a real sense, his myriad activities were intertwined. He was deeply aware that our freedoms are dependent not only upon the quality of our understanding of constitutional principles and their faithful and relentless application, but also upon our interrelationship with the other peoples of the world, and upon the quality of the land in which we live. All of these concerns he accepted as personal challenges to himself, to his understanding, his energy, and his ability and willingness to risk the consequences of unconventionality. To him, the existence of a problem was a challenge to probe its depth and composition, and a summons to devise and advocate a solution.

As a Justice, he did not hesitate to stand alone; [40] he was not intimidated by harsh criticism or the stridency of the McCarthyites; as an environmentalist, in eloquent language, he insisted that not only national policy, but the courts should respond to the call to preserve our natural heritage.[41] As a world citizen, passionately devoted to peace, he was

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[40] *E. g.*, the stay of execution that he granted in the *Rosenberg* case, *Rosenberg* v. *United States,* 346 U. S. 273, 313 (1953).

[41] See *United States* v. *Reserve Mining Co.*, 419 U. S. 802 (1974) (dissent from denial of application to vacate stay); and *Sierra Club* v. *Morton,* 405 U. S. 727, 741 (1972) (dissent).

ready to test the limits of Presidential power to engage in military operations.[42]

WHEREFORE, it is RESOLVED that we, the Bar of the Supreme Court of the United States, express our profound sorrow that Associate Justice William Orville Douglas is no longer with us; we express our deep gratitude for his outstanding and original contributions to the evolution of constitutional doctrine; and our admiration and appreciation of his unfailing courage and his insistence upon the principles that he considered to reflect the genius of our Constitution and the highest aspirations of our people. We record our acknowledgment of his participation as a constructive leader in three of the great issues of our time: The expansion of human rights and liberty, the protection of the environment, and the recognition of the rightful demands of the less privileged people of the world. We are grateful to him for providing his example of fearless dedication which has inspired us and will inspire future generations of lawyers and judges; and it is further

RESOLVED, that the Solicitor General be asked to present these Resolutions to the Court and that the Attorney General be asked to move that they be inscribed upon the Court's permanent records.

THE CHIEF JUSTICE said:

Thank you, Mr. Solicitor General, and I recognize the Attorney General of the United States.

Mr. Attorney General Civiletti addressed the Court as follows:

MR. CHIEF JUSTICE and may it please the Court.

The Bar of the Court met today to honor the memory of

[42] *Holtzman* v. *Schlesinger,* 414 U. S. 1316 (1973) (the Cambodian bombing) (Douglas, acting alone, granted stay); see, also, his dissents from denial of certiorari to review legality of the Vietnam war: *e. g., Sarnoff* v. *Schultz,* 409 U. S. 929 (1972); *Mitchell* v. *United States,* 386 U. S. 972 (1967).

William O. Douglas, Associate Justice of the Supreme Court from 1939 to 1975.

In the 36 years during which Mr. Justice Douglas served on the Court, this Nation emerged from an economic depression, fought a World War and two other serious armed conflicts, struggled to eliminate race prejudice and its pervasive effects, came to recognize the threat that unthinking and ravaging industrial production posed to its ecological systems, and faced increasing complexities in its social life that tested its political and economic institutions. All of these problems came before this Court in one form or another, and Mr. Justice Douglas was always ready to confront them. He brought to them a brilliant mind, open to ideas and creative solutions; but he rejected any approach that appeared to be out of harmony with the liberties rooted in the Bill of Rights. He brought to these contests a prodigious energy: he was not only the most prolific author of opinions ever to sit on the Court, but also the author of over thirty books on a wide variety of subjects. But most of all he brought to this work a great passion and the courage and ability to express it for us and for those to come after us.

Early in his tenure on the Court he made important contributions in the area of economic regulation—as might have been expected in light of his experience as an attorney with a Wall Street firm, as a director of bankruptcy studies at Yale Law School, and as a member, and then Chairman, of the Securities and Exchange Commission. His opinion for the Court in *Pepper* v. *Litton,* 308 U. S. 295 (1939), most clearly displays the strength of his views concerning the obligations of corporate fiduciaries. In that opinion, which upheld the challenge of an independent trustee in bankruptcy to a claim based on a judgment against the bankrupt corporation collusively procured by the dominant stockholder, he emphasized the breadth of the fiduciary obligation owed by a corporate officer. That standard of conduct, he wrote, "is designed for the protection of the entire community of interests in the corporation—creditors as well as stockholders." *Id.,* at 307.

Mr. Justice Douglas was the author of numerous other opinions construing the federal Bankruptcy Act, including careful and detailed treatments of complicated problems involving railroad reorganizations in *Meyer* v. *Fleming,* 327 U. S. 161 (1946), and *Gardner* v. *New Jersey,* 329 U. S. 565 (1947).

He also made a significant impact on the field of antitrust law. His opinions include *California Motor Transport Co.* v. *Trucking Unlimited,* 404 U. S. 508 (1972), and *Otter Tail Power Co.* v. *United States,* 410 U. S. 366 (1973), and an early opinion, sure to remain bedrock for generations to come—his masterful treatment of price manipulation in *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. 150 (1940). Until that opinion was handed down, it was supposed by many lawyers and businessmen that agreements that affected price levels but did not literally fix prices were not *per se* unlawful and thus could be defended against Sherman Act charges by proof that the agreement has a benign purpose, such as the elimination of competitive evils. Mr. Justice Douglas scotched that defense in the much quoted holding that "[u]nder the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se.*" *Id.,* at 223. Nearly 30 years later, in *United States* v. *Container Corporation of America,* 393 U. S. 333 (1969), he returned to this subject, writing an opinion for the Court holding that the reciprocal exchange of price information by the corporate defendants in that case violated section 1 of the Sherman Act.

In his *Socony* opinion, Mr. Justice Douglas spoke of the Sherman Act as a "charter of freedom" (310 U. S., at 221), a view that followed from his deep distrust of large concentrations of power having no effective social accountability. In one of the addresses collected in his book titled Democracy and Finance, published in 1940, he expressed the view that the trend toward large corporate combinations threatened

not only our competitive system, individual initiative and freedom of opportunity which was the essence of capitalism, but also other important democratic values. He looked to government as an important source of countervailing power and thus, in decisions such as his opinions for the Court in *Federal Power Commission* v. *Hope Natural Gas Company,* 320 U. S. 591 (1944), *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584 (1941), and *United States* v. *Detroit & Cleveland Navigation Co.,* 326 U. S. 236 (1945) (the latter an Interstate Commerce Commission case), he expressed a willingness to accord broad powers and discretion to the independent administrative agencies as they sought to carry out congressional mandates to protect the public interest in the matters regulated by those agencies.

But Mr. Justice Douglas was by no means an uncritical advocate of government regulation of American life. He was, above all, the champion of the individual, and in many of his most memorable opinions—notably those grounded on the First Amendment—he emphasized the importance of maintaining space, free from government interference, in which each individual can express his views, enjoy his privacy, and live his life according to his own lights. Maintaining this freedom was essential, he believed, not only for the benefit of each individual, but also for the health of society as a whole. Thus in *Terminiello* v. *Chicago,* 337 U. S. 1, 4 (1949), upholding the right of a speaker to express views that angered a crowd gathered outside the auditorium in which he spoke, Mr. Justice Douglas observed that "[t]he vitality of civil and political institutions in our society depends on free discussion [; and the] right to speak freely and to promote diversity of ideas and programs is . . . one of the chief distinctions that sets us apart from totalitarian regimes." And he added provocatively: "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." In his

dissent in *Dennis* v. *United States,* 341 U. S. 494 (1951), speaking out against convictions under the Smith Act for what he regarded as the mere act of teaching Marxist-Leninist doctrine and organizing others to do the same, he expressed the belief that the "airing of ideas releases pressures which otherwise might become destructive," and that in an atmosphere of free and full discussion, false ideas will be exposed and will "gain few adherents" (*id.,* at 584).

Mr. Justice Douglas' belief that the First Amendment also guaranteed a right of individual privacy and that this too was essential to a healthy society was in no way inconsistent with his vision of a robust, lively, and diverse America, for it was the heavy hand of government meddling in areas protected under the First Amendment that he opposed, not the babble and jostle of crowds in public spaces. Perhaps his best known opinion concerned with this right is *Griswold* v. *Connecticut,* 381 U. S. 479 (1965), recognizing a "zone of privacy created by several fundamental constitutional guarantees" (*id.,* at 485), and prohibiting government intervention in the sensitive and personal decisions of married couples concerning procreation. But the note was struck earlier in his dissent in *Public Utilities Commission* v. *Pollak,* 343 U. S. 451 (1952), a case concerned with the Commission's approval of a public transit system's practice of broadcasting radio programs consisting of musical selections and commercials in streetcars and buses. To Mr. Justice Douglas, this was government-approved coercion of a "captive audience" (*id.,* at 468), not only an intrusion on the transit riders' private ruminations but a form of regimentation; for some centralized official body was choosing the programs rather than leaving it to the people to make their own choices between "competing entertainments" (*id.,* at 469).

If Mr. Justice Douglas spoke frequently in dissenting opinions and in concurrences that bore his unique, unmistakable imprint, he sometimes spoke prophetically, setting forth a view that would eventually command a majority of the Court. Thus his dissent on the Fourth Amendment warrant

issue in *Frank* v. *Maryland,* 359 U. S. 360 (1959), bore fruit in the Court's opinions in *Camara* v. *Municipal Court,* 387 U. S. 523 (1967), and *See* v. *Seattle,* 387 U. S. 541 (1967); and he dissented on the Fifth Amendment self-incrimination issue in *Cohen* v. *Hurley,* 366 U. S. 117 (1961), subsequently overruled in *Spevack* v. *Klein,* 385 U. S. 511 (1967), in which he wrote the plurality opinion. His dissent in *South* v. *Peters,* 339 U. S. 276, 277 (1950), from the Court's *per curiam* opinion, which held that a constitutional challenge to Georgia's county unit system presented a political issue as to which the District Court properly withheld relief, was later vindicated in this Court's reapportionment decisions.

In the brief time we have here, it is not possible to discuss all of the areas in which Mr. Justice Douglas has made contributions. In his long tenure on the Court he dealt with the full range of issues that came before it, making significant contributions in cases concerning civil rights, securities regulation, the military and the selective service system, and in cases coming within the Court's original jurisdiction. But no discussion of Mr. Justice Douglas' career would be complete without reference to his concern for the environment. In his dissenting opinion in *Sierra Club* v. *Morton,* 405 U. S. 727 (1972), a case concerned with the highly technical doctrine of standing, he explained why, in cases involving environmental issues, he would accord standing to anyone representing "the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers" (*id.,* at 741)—valleys, alpine meadows, groves of trees, and rivers, all of them essential to the survival of fish, birds, and wildlife (*id.,* at 743). In this opinion, Mr. Justice Douglas spoke out again in favor of nurturing a diverse community but here he extended the community to include all forms of life—"the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams" (*id.,* at 752). This dissent lacks the significance in the development of the doctrine of standing that his opinion for the Court in a case such as *Barlow* v. *Collins,* 397 U. S. 159 (1970), enjoys; but it stands as a

reminder both of the source from which he drew much of his strength and inspiration and of the distinctive voice of a man unafraid to step to the music of a different drummer.

Mr. Chief Justice, in the name of the lawyers of this nation and, in particular, of the Bar of this Court, I respectfully request that the resolutions presented to you in honor and celebration of the memory of the late Mr. Justice Douglas be accepted by this Court.

The Chief Justice said:

Thank you, Mr. Attorney General and Mr. Solicitor General, and on behalf of the Court I particularly thank you for these splendid resolutions summarizing the career and in memory of our late colleague and friend, Justice Douglas.

We ask that you convey to the members of the Committee on Resolutions our deep appreciation of their very appropriate presentation here today.

Your motion, Mr. Attorney General, that these resolutions be made part of the permanent record of this Court is granted.

Justice Douglas' long tenure on this Court, without more, sufficed to make him a unique figure in the Court's annals. In his 36 years on the Court our country experienced massive and pervasive changes in its social, political, and economic structure. Worldwide conflicts disturbed and altered American life, leaving in their wake mountains of intractable problems.

During this long tenure on the Court Justice Douglas participated in more than one-fourth of all the reported cases in this Court since 1790, a record, as you have pointed out in your resolutions, unparalleled. But more important even than the volume is the nature of the issues the Court was called upon to deal with during this period. You have mentioned some of the specific cases and specific issues.

Bill Douglas and I were colleagues on the Court for six years, and even during that short span the Court was confronted with some of the most vexing and sensitive and com-

plex issues in the history of the Court. Disagreement on such issues is of course the norm. It has always been so, and always will be under our system. Indeed, it is imperative that this be the case, for a pattern of unanimity is alien to democratic institutions.

I share with others great respect for his keen mind, his unwavering commitment to his own beliefs, and his zest for grappling with new problems. All of us were the beneficiaries of his unparalleled firsthand knowledge of a multitude of past decisions of the Court, and in conferences now we miss his verbal footnotes describing the details of the evolution of many of those decisions.

Bill Douglas lived life to the fullest in the manner of the rugged individualists who opened this continent, people he admired so much. The opening of this continent was a task for strong, independent, assertive, vigorous, creative, and imaginative people. The words I have just used really describe Bill Douglas. He exemplified them. He exemplified all these qualities.

As we know, his adventurous, questing spirit led him all over the world. He traveled in order to experience the beauty of the natural environment, and to understand other people, to probe into their ways of life, to learn of their suffering and of their aspirations. In one of our many visits in my chambers over a cup of tea he said once that his travels throughout the world had given him a better understanding of the grandeur and majesty of the American democratic idea and ideal, of our commitment to freedom, and the success of our Constitution. He shared the conviction of his friend, Henry Steele Commager, that nothing in all history succeeded like America.

Few Justices of this Court in our history sought more, I think, to press for reexamination of established patterns and accepted perceptions of our social and economic and political structure. His lifelong pursuit of his own ideals demonstrates that people of imagination and courage who feel deeply, as he did, and who act on their beliefs, as he did, are

those who make others think and rethink conventional beliefs. With Justice Holmes he believed that to live life fully one must share in the passions and actions of his time. And long before the word "ecology" had found its way into the popular vocabulary he was, as both the Attorney General and the Solicitor General have told us, an ardent student of conservation, and an advocate of the preservation of the gifts of nature.

Those of us who live by the Potomac, indeed, all of the people of this country, owe a debt to Bill Douglas for his protests and his efforts which saved the Chesapeake and Ohio Canal from what he called "the roar of the wheels and the sound of the horns." Due largely to him the Canal was preserved and declared a National Historic Park. And many of us here today were present when the Canal was dedicated in his name, pursuant to an Act of the Congress.

In his fourscore years, Bill Douglas climbed many mountains; not just the visible mountains on our continent and other continents, but mountains of the law and mountains of ideas, economic, social, and political. Like so many restless, dynamic, inquisitive human beings, he left trails of his philosophical and his physical explorations so that others may share them and, if they wish, follow his trail.

Some aspects of Bill Douglas' image, his public image—in part, at least—reflect the distortions inherent in modern life, and the penchant to put public figures into immutable slots. He was called a godless atheist and a leftist activist. But of course, as we well know, he was neither. He had strong views as to how to preserve the freedom of the private enterprise system from even some of its own flaws.

He was a deeply religious man, but religious in his own way, and not in any orthodox pattern. His range of moods reflected the range of his interests in life, and that covered virtually all of the human condition. Sometimes like a comet, as we know, he would flare and as quickly subside. But his intimates who understood him relished the light and ignored the heat.

He was unconcerned about his public image. In fact, I think, he took no little delight in confounding his critics. The ill-advised and, happily, short-lived thrust at an impeachment naturally disturbed him as it would disturb any man, and he properly resented it. But even on that his concern was not for long. At times he could have explained himself and warded off some of the hostility that was aimed at him from time to time, but for various reasons, he declined to do so.

I sometimes wondered whether or not he chafed in the inescapably monastic life on this Court, and longed really to be in the rough and tumble of the political arena or the business world, where he could let himself go giving blows and warding them off. He took a pixie delight sometimes in baiting his critics into even more violent hyperbole, and with a good writer's skill he used hyperbole to make his own points.

There were many fields of human activity in which Bill Douglas would have made a notable mark in life. In the world of business, as I suggested; in politics; in education; perhaps even in science. His exuberant, dynamic energies spilled far beyond the stately processes of the judiciary and into many other areas of American life as we know. And we are all richer for his sojourn here.

As I did in paying respects to him at the time of his death, I recall to you now, in closing, something he said near the end of his active career on this Court. Here are his words.

"I think the heart of America is sound. I think the conscience of America is bright, and I think the future, the future of America is great."

His words should give heart to all of us as we face the future and remember his rich life.