



## SUPREME COURT JUSTICE

WILLIAM O. DOUGLAS

*“Bill’s life, like his law, was free.”*

Of all the Supreme Court Justices in our history, William O. Douglas was the most consistent and forthright defender of individual liberties against government’s exercise of arbitrary power. His life, on and off the bench, exemplified constitutional Americanism as vividly defined by Alan Barth, a longtime illuminator of the Bill of Rights and the rest of the Constitution for the *Washington Post*: “Individual freedom is a means, an invaluable means, toward national security and survival. But it is an end as well—the supreme end which the government of the United States was instituted to secure.”

Some constitutional scholars have faulted Douglas because he used few footnotes in his decisions, but Douglas did not write for scholars. He wrote clear, vigorous prose that anyone could understand because the Constitution was not made only for scholars.

Some of the scholars criticized him because, they said, he hadn’t created, over the years, a coherent philosophy of constitutional law. But coursing through nearly everything he wrote was Douglas’s unwavering conviction that the people of the United States are in charge of the government, not the other way around, and that each of us has the fundamental right to his or her own views, even if those views go against the moral or political conclusions of the majority. More of his philosophy of constitutional liberty is charted in chapter 2 in the story of a black Texas lawyer, Anthony Griffin, whose work exemplifies Douglas’s insistence on protecting individuals against the government.

Douglas also continually warned of threats to our liberties from the government. In 1976, he wrote to the Young Lawyers Section of the Washington State Bar Association:

The Constitution and the Bill of Rights were designed to get Government off the backs of the people—all the people. Those great documents . . . guarantee to us all the rights to personal and spiritual self-fulfillment. But that guarantee is not self-executing.

As nightfall does not come all at once, neither does oppression. In both instances, there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be most aware of change in the air—however slight—lest we become unwitting victims of the darkness.

If enough of us are to remain aware of changes in the air, the words of the Constitution—especially of the Bill of Rights—must leap off the pages and into our lives. Yet to how many Americans is the Constitution *personal* and therefore worth protecting against its domestic enemies?

He looked like his old friend Spencer Tracy and was amused when moviegoers, mistaking him for the actor, asked for an autograph. The thing about Tracy, William O. Douglas used to say, was that “he never talked bunk.” Also, said the Supreme Court justice of the film star, “I never knew anyone more American than he.”

Douglas could have been speaking about himself. Blunt, fearless, he scorned legalistic, euphemistic language. He was the same “Wild Bill,” as his law clerks called him, on the bench as he was on the mountains he loved to climb: passionate, clear, and as rebelliously individualistic as the very framers of the Constitution. Indeed, the fiery main theme of the more than twelve hundred opinions he wrote during thirty-six years on the High Court—he served longer than any other justice in our history—was undiluted, revolutionary Americanism. And that is why he was the most crucially important member of the Court in our time.

But Bill Douglas’s value to the nation was far more than as a jurist. In the brilliance and the sweep of his intellect, the boldness of his

attacks on illegitimate authority—no matter how high or powerful—Douglas was in the direct line that included Thomas Jefferson, James Madison, Frederick Douglass, Eugene Debs, and Senator Bill Langer, the North Dakota maverick who supported Douglas when hardly anyone else would.

There is no voice now like that of Douglas, who in 1972 furiously asked this question: “Since when have we Americans been expected to bow submissively to authority and speak with awe and reverence to those who represent us? The constitutional theory is that we the people are the sovereigns—the state and federal officials only our agents. We who have the final word can speak softly or angrily. We can seek to challenge and annoy, as we need not stay docile and quiet.”

This uncompromising Jeffersonian stance got Bill Douglas into a lot of trouble with those, in and out of government, who, if they had to vote on the Bill of Rights now, would condemn it for having gone too far (including the First Amendment, which guarantees freedom of speech, press, assembly, and religion, and the power of the people to confront government).

Three times there were moves in Congress to impeach the justice. One was in 1953, when he stayed the executions of Julius and Ethel Rosenberg. (His brethren immediately overruled him.) Acutely aware of the incendiary popular feeling against these convicted atomic-bomb spies, Douglas figured that his act might lead somebody to “take a shot at me,” but he’d be damned if he’d be intimidated. Under the law, he said, the Rosenbergs couldn’t be sentenced to death unless the jury had so recommended. And the jury had not. Therefore, Douglas declared with characteristic straightforwardness that “no man or woman should go to death under an unlawful sentence.” The Rosenbergs were electrocuted anyway, but Douglas had no complicity in that judicial murder.

In 1966 another impeachment posse went after Douglas because the justice, then sixty-seven, had recently taken as his fourth wife twenty-three-year-old Cathleen Heffernan. It was always Douglas’s unyielding view that he, like any other citizen, had the right to live his life anyway he chose so long as he didn’t break the law. The Bill of Rights, as Douglas often said, was designed to keep the government off the backs of the people. And that meant Bill Douglas, too.

The final impeachment plot came in 1970, led by House Minority Leader Gerald Ford, serving as a ventriloquist's dummy for President Richard Nixon and Attorney General John Mitchell, who accurately considered this foremost paladin of the Bill of Rights their natural enemy. The charges included the scandalous fact that Justice Douglas had exercised his First Amendment rights by writing for such "pornographic" magazines as *Evergreen Review*. Another allegation had to do with a \$12,000-a-year retainer Douglas was receiving for his work on a charitable foundation set up to promote international understanding by bringing foreign students to the United States to study the workings of American government. The businessman who had funded the project, it turned out, held a mortgage on a Las Vegas hotel and gambling casino. Therefore, Gerald Ford implied, Douglas had ties with the Mob. A House judiciary subcommittee entirely cleared Douglas.

Having had his high noon with Nixon, Mitchell, and Ford, Douglas kept on being his controversial self. And he continued to be a loner on the Court, for he never engaged in the customary bargaining there whereby a justice, to persuade enough of his brethren to make a majority, trades off bits and pieces of his own principles. Because Douglas would not dilute his opinions, he was wholly free to play to his greatest strength. As one of his former law clerks, Harvard Law School professor Vern Countryman, said of Douglas, "his capacity to get to the guts of the issue was his most distinguishing characteristic. He wouldn't get enmeshed in technicalities or doctrine. He would always see clearly what the issue was. And powering that extraordinary skill at penetrating to the heart of the matter was Bill Douglas's rage, until death itself, against injustice."

Justice Hugo Black, his longtime ally in many dissents that later become majority opinions, said that "Bill must have come into this world with a rush, and his first cry must have been a protest against something he saw at a glance was wrong or unjust."

For instance, three years after the Nixon team tried to have him thrown off the Court, Douglas became the first member of the High Court in history to order that American bombing of another nation be stopped. He didn't stop the bombing for long, because his appalled brethren reversed his decision, but the courage he showed—and the fundamental humanity of his opinion—particularly underscores what

Douglas meant to the nation. Although he was best known for his decisions giving full breathing room to the First Amendment, a body of work that will be a benchmark of liberty of speech and the press so long as this country exists, there was much more to Douglas, as the case of *Holtzman v. Schlesinger* reveals.

In 1973 Congresswoman Elizabeth Holtzman of New York and several air force officers serving in Asia sued to force the secretary of defense, James Schlesinger, to stop U.S. air operations over Cambodia. Why? Because Congress had not declared war on that hapless country. For years Nixon and Kissinger had secretly been destroying that land, and now it was being done openly. A lower court had agreed with Holtzman and the air force officers, but a court of appeals ruled that the bombing must go on until the case went all the way through the judicial system. The Supreme Court, however, was in summer recess, and so the lawyers for Holtzman and the other antibombers went to Douglas to get him to stop the killing. They found him in his beloved Goose Prairie, Washington (permanent population: eight), a place on the last natural frontier that he considered his permanent home.

Douglas examined all the arguments on both sides and said that, in essence, this was like all other capital cases. That is, when life is about to be lost and there is doubt whether due process has been followed in the imminent taking of that life, a stay of execution must be granted because “death is irrevocable.”

Then Douglas spelled out his opinion in language so clear that all citizens could understand it:

The classic capital case involves whether Mr. Lew, Mr. Low, or Mr. Lucas should die. The present case involves whether Mr. X [an unknown person or persons] should die. No one knows who they are. They may be Cambodian farmers whose only “sin” is a desire for socialized medicine to alleviate the suffering of their families and neighbors. Or Mr. X may be the American pilot or navigator who drops a ton of bombs on a Cambodian village. The upshot is that we know that someone is about to die.

Douglas granted a stay of the bombings. It wasn’t up to him, he pointed out, to decide at this juncture whether the bombings were

constitutional, but anyway, he let us know what he did think: "Even if the 'war' in Vietnam were assumed to be a constitutional one, the Cambodian bombing is quite a different affair. Certainly Congress did not . . . declare war against Cambodia and there is no one so reckless as to say that the Cambodian forces are an imminent and perilous threat to our shores."

The very next day the other members of the Supreme Court, polled by telephone, decided to let American bombers continue their killing in Cambodia. William Douglas, of course, was the only dissenter.

Douglas so often stood against the majority, in fact, that he filed more dissents—531—than did any other justice since the founding of the Court. And more of his dissents later became the law of the land than did those of any of the other Great Dissenters, including Louis Brandeis and Oliver Wendell Holmes.

Most often Douglas was alone or in alliance with Hugo Black in his total resistance to punishing people for their speech or writing, no matter how outrageous, offensive, or "subversive." Of all his dissents, he was proudest of what he said in *Dennis v. United States* (1951), when the High Court affirmed the conviction and jailing of eleven Communist Party leaders for "teaching" and "advocating" the overthrow of the government by force.

It was a time when much of the nation was transfixed by the fear of communism, and witch-hunts against domestic Reds, real and imaginary, were being conducted with at least as much fervor as in colonial Salem. Yet Douglas unequivocally declared that these Communist Party officials were fully protected by the First Amendment because all they had done was to discuss and teach certain books. They had only engaged in "speech, to which the Constitution has given a special sanction. . . . We have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above all else feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world."

But these were *Communists*! That is precisely, said Douglas, why they, too, should be able to speak freely here. And he quoted, at the end of his dissent, from a 1938 book by the chief Soviet prosecutor

Andrei Vishinsky, *The Law of the Soviet State*. Vishinsky had warned the citizens of *his* country as follows: "In our state, naturally, there is and can be no place for freedom of speech, press, and so on for the foes of socialism."

"Our concern," Douglas emphasized, "should be that we accept no such standard for the United States." The quintessential difference between a free nation, as we profess to be, and a totalitarian state, is that here *everyone*, including a foe of democracy, has the right to speak his mind.

Douglas never got over the anti-Americanism of the majority of his brethren in that case. In 1973, speaking to students at Staten Island Community College in New York, the dauntless First Amendment warrior said of the convicted Communist leaders: "Those defendants were not plotting revolution, handing out grenades, making caches of rifles and ammunition and the like. They were teachers only—men teaching Marxism."

Not only was all political speech protected, said Douglas again and again, but *all* speech and writing was, as well. The First Amendment could not be more clear. There shall be no law "abridging the freedom of speech or of the press." Period. As Douglas thundered in the 1966 *Fanny Hill* case, "Publications and utterances were made immune from majoritarian control by the First Amendment, applicable to the states by the Fourteenth. *No exceptions* were made, not even for obscenity" (emphasis added).

Throughout his long term on the High Court, Douglas was appalled that his brethren took it upon themselves to police so-called obscenity. He himself never saw the movies or read the books that came up for decision, "because I have thought the First Amendment made it unconstitutional for me to act as a censor."

Back in 1957, when a majority of the Court first directly ruled that "obscenity" was not protected by the First Amendment, Douglas made his position utterly clear, and he never budged from it. Dissenting in *Roth v. United States*, the conservator of individual liberty proclaimed the following:

Any test that turns on what is offensive to the community's standards is too loose, too capricious, too destructive of freedom of

expression to be squared with the First Amendment. Under that test juries can censor, suppress, and punish what they don't like, provided the matter relates to "sexual impurity" or has a tendency "to excite lustful thoughts." This is community censorship in one of its worst forms. If the First Amendment is to mean anything in this field, it must allow protests even against the moral code that the standard of the day sets for the community.

In obscenity cases and all other cases that came to him on the Court, Douglas was the strictest of constructionists, interpreting the Constitution as the guarantor of *individual* liberties it was fully intended to be. His decisions echoed the words of James Madison, the principal architect of the First Amendment, who kept emphasizing that the greatest danger to liberty in this free nation is to be found "in the body of the people, operating by the majority against the minority."

What particularly enrages the majority is any protest against its customs, values, and norms of proper behavior. As long as that protest was peaceful, however, Douglas not only supported but also encouraged it. For example, during the rise of the civil rights movement in the South, students were arrested in a small Florida town for assembling at a jail to protest the official segregation policies. In an opinion dissenting against the upholding of the protesters' convictions, Douglas delivered a classic endorsement of every American's right to take to the streets to exercise his freedom of speech:

The right to petition for the redress of grievances is not limited to writing a letter or sending a telegram to a congressman; it is not confined to appearing before the local city council, or writing letters to the president or governor or mayor. Legislators may turn deaf ears; formal complaints may be routed endlessly through a bureaucratic maze; courts may let the wheels of justice grind very slowly.

Those who cannot afford to advertise in newspapers or circulate elaborate pamphlets may have only a more limited type of access to public officials. Their methods should not be condemned as tactics of obstruction and harassment as long as the assembly and petition are peaceable, as these were.



This craggy six-footer from the West, who always looked directly at you with his gray-green eyes, continually insisted that the Constitution exists to nurture dissent and to protect the powerless. It was made to safeguard the heretic from the state and to give the poor at least a shot at justice. He was years ahead of his brethren, for instance, in urging that all criminal defendants be given free counsel if they couldn't afford a lawyer.

The intensity of Douglas's empathy with outsiders, even outcasts, did not come solely from an abstract reading of constitutional history. It came from his own life. As he once said, "I worked among the very, very poor, the migrant laborers, the Chicanos, and the members of the Industrial Workers of the World [IWW], whom I saw being shot at by the police. I saw cruelty and hardness, and my impulse was to be a force in other developments than cruelty and hardness in the law."

Douglas was born on October 16, 1898, in Maine, Minnesota. Soon after birth he was taken to California and then to a small town in Washington. His father, a circuit-riding frontier preacher, died there when the boy was six. Three years before, the child had contracted polio, and the doctors had gloomily assured his family that the stricken youngster would never walk again and would be lucky to live to the age of forty. Fatherless, growing up in poverty, Douglas spent much of his childhood forcing his limbs back into full use through hiking and mountain climbing. Along with instilling in him a lifelong tenacity of awesome proportions, this experience turned Douglas into an ardent admirer and protector of what was left of the wondrous wilderness.

An environmentalist before the term was known, Douglas was later, in dissent, to fight against any further exploitation of forests and streams, even claiming that all the forms of natural life should have a representative standing before the Supreme Court to defend their right to exist—"the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams."

Although the young Douglas felt at one with his surroundings out on the trail and on the ridges, he was acutely conscious of being "different" back in Yakima, Washington, where he grew up. The family was so poor, he recalled in his autobiography, *Go East, Young Man*, that he, his brother, and his sister were never invited to a single chil-

dren's party. "We grew up never seeing the inside of another home." In retrospect, Douglas was glad that he had never become "united with the elite of Yakima," because "to be accepted means living in the right area, wearing the right hat, thinking the right way, saying the right thing. What it means in the law is a Dean Acheson or John Foster Dulles or a reactionary president of the Bar Association. They cause all the beauty to disappear in pontifical emptiness."

Douglas never did become part of any elite. While he was on the Court, his friends were mostly his old companions of the trail rather than chieftains of the American Bar Association; and rather than dining in expensive, exclusionary Washington clubs, Douglas used to hang out at Jimmie's Cafe, an informal beer-and-sandwiches joint on Pennsylvania Avenue near the Supreme Court. When not in his robes, he looked like anything but an ultimate arbiter of constitutional law. Once, at the end of a long hike down the Chesapeake and Ohio Canal outside Washington, D.C., Douglas was refused service at an inn because he was taken for a tramp. He never told those people he had a job.

Another time, coming down from Mount Adams in the state of Washington, the justice developed so painful a set of blisters that he went into a doctor's office for relief. That worthy told the frontiersman, "We don't take care of the likes of you. There's a clinic down the street that takes care of all the bums." When Douglas pulled out twenty-five dollars, the doctor started calling him "sir."

"While he applied the bandages," Douglas recalled, "I told him quietly how the law was way ahead of medicine, how, if he were disbarred for malpractice and was indigent, the highest court in the land would take his case, would waive all filing fees and costs and name a lawyer—as good as Bethlehem Steel has—to represent him."

"How do you know all that?" the doctor asked.

"Because, sir," Douglas answered, "I seem to spend a lot of time there."

From boyhood on, Bill Douglas was most comfortable with those who would never be part of the elite. As a teenager, during vacations from school, he worked with harvest crews in the wheat fields of eastern Washington. And alongside him here, as well as on other laboring jobs he had, were members of the IWW, also called Wobblies, who

believed in the abolition of capitalism and the establishment of a true socialism, under which hunger and want would also be abolished. To the good burghers of such towns as Douglas's Yakima, the Wobblies were dangerous, disreputable radicals, but Bill Douglas found them to be "warmhearted people" who had "higher ideals than some of the men who ran our banks and were the elders in the church."

Douglas also rode the rails with the Wobblies, picking up an acute distrust of the dedication of the police to justice that stayed with him all his years. "Most of the IWWs," he used to say, "had no criminal records and engaged in no lawless conduct. Yet, though few who rode the rods were criminals, we were all treated as outcasts or vagrants; we were even fired on by the police in railroad yards." (He was the only future justice of the Supreme Court to have had this experience.)

Douglas had to work to get through school. He graduated from Whitman College in Walla Walla, Washington, taught school in Yakima for two years, and then was accepted at Columbia Law School. He paid for half the journey to New York as a freight hand handling two thousand sheep. The rest of the way he traveled as a hobo, riding the rails. He arrived in New York City with six cents in his pocket.

Douglas worked his way through Columbia and graduated second in his class. Then came the most severe disappointment in his life to that point. He had fully expected to be chosen as a law clerk for Supreme Court Justice Harlan Fisk Stone, but the appointment didn't come through. There went his chance to see how the High Court actually worked. Looking for a job, Douglas applied to a number of prestigious and immensely powerful Wall Street law firms. At one of them he was interviewed by John Foster Dulles, later the most righteous of the cold war secretaries of state.

"I decided against going with Dulles and his firm," said Douglas, "because he was so pontifical. He seemed to me like a high churchman out to exploit someone. In fact, I was so struck by Dulles's pomposity that when he helped me on with my coat, as I was leaving his office, I turned and gave him a quarter tip."

For a while Douglas did work for one of the elite Wall Street firms, but he hated it. "I looked around at the older men there, and I knew I didn't want to be like *any* of them. They couldn't climb a

mountain, couldn't tie a dry fly; they knew nothing about the world that was closest to me—the real world, the natural world.” Or, as his friend Yale Law School professor Fred Rodell was to say, “Bill's life, like his law, was free.”

After a year practicing law back in Yakima and a brief teaching period at Columbia Law School, Douglas went off to a professorship at Yale Law School, where his swiftly rising reputation as an expert in financial matters led to his 1934 appointment to the Securities and Exchange Commission (SEC), of which he became chairman two years later. As the *Washington Post* summarized Douglas's tenure at the SEC, the mountaineer from the Far West “brought the giants of Wall Street to heel.”

In 1939 Franklin Roosevelt, who had come to admire Douglas's keenness of intellect and natural egalitarianism displayed during many White House poker sessions as well as during his time on the SEC, appointed him to the Supreme Court. At forty Douglas was the youngest justice in more than a century. It was Louis Brandeis's seat he had taken, and the Great Dissenter had become a kind of mentor to the westerner during Douglas's Washington years. A Brandeis dissent that Douglas liked to quote had been written for the very first wiretap case, in 1928. Brandeis was unalterably convinced that wiretapping was an invasion of privacy, thereby violating the Fourth Amendment, and warned the following: “If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.”

Douglas kept those words in mind as well as Brandeis's deep suspicion of the concentration of power, whether in government or in the private sector. “Brandeis said,” Douglas pointed out in a 1972 CBS television interview, “if we continue in the way in which we're going, this nation will become a nation of clerks, submissive clerks, rather than independent, free men. And he was quite right.”

So it was that nine years after he came onto the Court, Douglas himself sounded a warning in a characteristic dissent: “Power that controls the economy should be in the hands of elected representatives of the people, not in the hands of an industrial oligarchy. . . . It should be scattered into many hands so that the fortunes of the people will not be dependent on the whim or caprice of a few self-appointed men.”

A single Supreme Court justice could not do much to fulfill this vision of economic democracy, but a president might. And in 1944 Douglas was almost placed in a position that could have made him president. Franklin Roosevelt told the Democratic Convention that either Douglas or Harry Truman would be acceptable to him as the vice presidential nominee. Douglas's name was first on FDR's list, but Robert Hannegan, chairman of the Democratic Party, reversed the names when he sent the list to the party leaders. If FDR died, Truman, who had come up through the party machinery, would be far more predictable and much less dangerous to the status quo than the wild card from the West would be.

Douglas used to claim that he never had any real interest in being president anyway, but when asked by lawyer-journalist Sidney Zion how his presidency would have differed from Truman's, he said this: "For openers, the atomic bomb wouldn't have been dropped on Hiroshima; there wouldn't have been a Cold War; there wouldn't have been the Korean War; there wouldn't have been loyalty oaths; there wouldn't have been the witch-hunts; there wouldn't have been a seizure of the steel mills; and we sure as hell would have recognized Red China."

In any event, Douglas, remaining on the Supreme Court, wielded the First Amendment like a giant broadsword against all who would try to tame the people of this nation. In 1949 he proclaimed the following: "A function of free speech under our system of government is to *invite dispute*. It may indeed best serve its high purposes when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea" (emphasis added).

The work of the Court, however, hardly took up all of his time. When other justices, particularly Chief Justice Warren Burger, complained that the nine men were greatly overburdened, Douglas noted that it took him just four days a week to take care of his work there. But then, Douglas was a good deal smarter than his brethren. Abe Fortas, an old friend and a colleague on the Court, said, "His mind is a cutting instrument of fabulous sharpness. His intellect is a well-ordered, highly organized machine."

Accordingly, much to the annoyance of some of the other justices, Douglas, while hearing oral arguments along with his brethren, was able to write a good many of his books. Jotting away, seemingly oblivious of the jousting of the lawyers in front of the bench, Douglas would suddenly raise his head, ask the most penetratingly pertinent question of the morning, and soon go back to the next chapter of his work in progress.

With the time to roam, intellectually and geographically, Douglas wrote thirty books and traveled to every continent except Antarctica. A man who had conquered just about all fears, he still had one left when he was appointed to the Court: that he might become so enshrined there that he would not have enough *experience* to be a fully responsive justice. As Douglas once said to Eric Sevareid, a prominent CBS commentator, "The decisions we make on the Court are profoundly important to the people. And I think that the person who goes there and stays ten, twenty, thirty years, should be very active in life. Otherwise, he'll end up a dried husk, unrelated to anything that's going on in the world."

No other justice in American history was more active in life or had a wider range of knowledge than Bill Douglas. And because he refused to insulate himself within any one class or age group as he grew older, he never did lose his youthful curiosity and irreverence. Without being sentimental, moreover, Douglas tried to reach out to the young, writing in publications he figured they read. "People of my generation," he explained, "are bankrupt. Politically and philosophically bankrupt. Look at what they've produced: a system that makes war the alternative, a system that's highly stratified, that just pays off great sums of money. This is socialism for the rich. I'd like to reach the minds of the youngsters because this system doesn't have to be this way."

Once, in a recording distributed by Scholastic Magazines and Folkways, Douglas had a chance to speak directly to very young students. His advice essentially was to live as he had: "Learn to live boldly and adventurously, get rid of all the fears that slow people up and inhibit them. Come to the world with an open mind. Don't be afraid of it."

And in the epigraph to the first volume of his autobiography, Douglas, quoting a thirteenth-century Persian poet, added: "All your

anxiety is because of your desire for harmony. Seek disharmony; then you will gain peace.”

Bill Douglas actively and exultantly pursued disharmony for all his eighty-one years. The last six were extraordinarily frustrating, however, because a stroke he suffered on New Year's Eve, 1974, incapacitated him. With great reluctance, he resigned from the Court on November 12, 1975, after striving mightily, in intense pain, to continue his work there. And after he yielded that much to his infirmity, Douglas nonetheless tried to stay on as a “tenth justice.” The Constitution, had no provision for such an arrangement, however, even for its most fervent protector, and Douglas was eventually persuaded to withdraw entirely.

His mind would not be confined, though, and Douglas continued writing, finishing the final volume of his autobiography. The book presents scathing profiles of certain justices, most notably the late Felix Frankfurter and then chief justice Warren Burger.

Until the end, Douglas kept up with his usual wide range of interests, which went far beyond the Court and the law. In May 1979, for instance, he commented trenchantly in a letter to the *Washington Post* on what had happened at the Three Mile Island nuclear disaster: “The message is clear. The benefits of nuclear power are far outweighed by the greater risks imposed upon an unsuspecting public. If we should treat the energy crisis as the ‘moral equivalent of war,’ then we should view the continued use of nuclear power plants as the ‘moral equivalent of suicide.’”

On January 19, 1980, William Orville Douglas, after being hospitalized for a month with pneumonia as well as lung and kidney failure, died at Walter Reed Army Medical Center in Washington, D.C. He was eighty-one. His Court opinions fill 118 large volumes, a quarter of the entire production of the Supreme Court from its beginning. But Bill Douglas's opinions—and the thrusting spirit of liberty that powers them—are not just for study by constitutional scholars and historians. He reached, and will keep on reaching, Americans who continue to refuse, in Louis Brandeis's words, to become “submissive clerks” rather than remain contentiously independent citizens.

“The conscience of this nation,” he used to say, “is the Constitution.” Douglas was its keeper.