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DEDICATION

NINETEEN EIGHTY: BEING AN INTERVIEW WITH WILLIAM O. DOUGLAS SHORTLY AFTER HIS DEATH TOGETHER WITH A BRIEF REMEMBRANCE OF HIS LIFE

Marc Stickgold*

This is the first decade of the twentieth century we enter without William O. Douglas.¹ For many, without him it is scary and lonely. His absence from the Supreme Court is, sadly, all too obvious;² his absence from public debate is an even more unique loss.³ In describing his own father's death, the Justice captured that fear and sense of loss:

I also remember the day word came that he had died. The news brought a very special shock . . . There would never be another to lift me high in the air, to squeeze my hand . . . He would never return. At first I could not believe his absence was so complete . . . As I stood by the edge of the grave a wave of lonesomeness swept over me. Then I became afraid—afraid of being left alone,

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1. William O. Douglas was born on October 16, 1898, in the small town of Maine, Minnesota. In later years, when he travelled the world, he used to particularly enjoy provoking immigration officials by his response to the inevitable question, "Where were you born?" He would respond, "Maine (Long Pause) Minnesota."

2. "Conceiving of a Supreme Court without Douglas, J., dissenting, is almost like trying to ring a clapperless bell, or watching hockey played without a puck." Duke, *Mr. Justice Douglas*, 11 HARV. C.R.-C.L. L. REV. 241 (1976).

3. Justice Douglas "played a unique role in that struggle . . . He did not hide his interest in the world around him. He is interested in people, in places, in nature and in social justice. He cares deeply about these things and has said so publicly." Ares, *Mr. Justice Douglas*, 11 HARV. C.R.-C.L. L. REV. 229, 231 (1976).

afraid because the grave held my defender and protector.⁴

William Douglas spent his life as "defender and protector" of those "lonesome" people who heard a different drummer; who were outcasts; and who struggled against oppression. "[H]e has come to symbolize . . . the never-ending struggle to make living realities of our constitutional guarantees of individual liberty."⁶ He recognized quite early that society's establishment has little compassion for the humanity of people, and little concern for the integrity of the "precious and delicate child"⁶ which is our world.

INTERVIEWER:** *You said many times that the most dangerous thing for a person, at any time, is to be alive.⁷ How does death strike you?*

4. W. O. DOUGLAS, *GO EAST YOUNG MAN* 12-13 (1974). His father, a poor Presbyterian minister, died when young William was six. It was the second major trauma of his young life. He had been stricken with polio when he was two years old, "and its after effects haunted me for years." *Id.* at 32. He described the "ordeal": "The country doctor . . . thought I would lose the use of my legs . . . His prescription for the legs was frequent massage in salt water. . . . Mother kept a ceaseless vigil . . . She soaked my legs . . . , massaging each leg muscle every two hours, day after day, night after night. She did not go to bed for six weeks." *Id.* The Justice said, "It was infantile paralysis that drove me to the outdoors." *Id.* at 31.

5. See Ares, *supra* note 3, at 229.

6. See W.O. DOUGLAS, *supra* note 4, *Preface* at xv. The Justice's autobiography is replete with his early realizations "that there were those even in this free land who thought that some . . . were more equal than others." *Id.* at 61. "I left San Francisco suspecting that World War I was being fought for the Establishment, which was not greatly concerned in maintaining an open society . . ." *Id.* at 92-93. His concern for the environment is, of course, legend.

** This imaginary posthumous interview with William O. Douglas on the issues of the 1980's seems an appropriate way to acknowledge his "approach to world affairs [that] has been prophetic." Clark, *Bill Douglas—A Portrait*, 28 BAYLOR L. REV. 215, 218 (1976). As Professor Duke has stated "his prescience has bordered on the superhuman." Professor Duke continued:

He predicted Watergate and the crimes of the C.I.A., just as he told us a generation ago what would happen to our rivers and streams, our air, our salmon and our trout. He nearly got himself impeached a decade or so ago for suggesting recognition of China We could have preserved an unrestorable quality of life, avoided countless tragedies, grasped many lost opportunities, had we only listened to him earlier.

Duke, *supra* note 2, at 242. His insights and ideas are as timely on the crises of today as they ever were.

7. E. Severeid, Interview with William O. Douglas (1972) reprinted in *IN HONOR OF JUSTICE DOUGLAS: A SYMPOSIUM ON INDIVIDUAL FREEDOM AND THE GOVERNMENT* 150 (R. H. Keller, Jr., ed. 1979). See also Burleson & Bowmer, *William O. Douglas—In Retrospect*, 28 BAYLOR L. REV. 211, 212 (1976).

- DOUGLAS: *At first I was quite concerned—for Cathleen, for my family, and my friends. I know how hard it is to lose someone. But for me, so far, it's been restful, if a little boring. I'm glad the pain is gone. But I miss the great risks of life.*
- INTERVIEWER: *You once suggested, I think, that social activism should be a prime criteria for determining admission to Heaven.⁸ What do you think now that you are there?*
- DOUGLAS: *Perhaps you make an unwarranted assumption! Heaven is not the only alternative, you know.*
- INTERVIEWER: *But I assumed . . .*
- DOUGLAS: *Be careful about assumptions! By and large, the entry system works well. But I have told them I'm not thrilled by their essentially two-tier system. I hope to be on the admissions committee soon. That should make some difference.⁹*
- INTERVIEWER: *What do you think about all the accolades that have been accorded you since your retirement from the bench—and since your death? I'm thinking particularly about the warm words from Gerald Ford and Warren Burger.¹⁰*
- DOUGLAS: *I never had much respect for people who lie when you die even more than they did while you lived. But most of the remembrances were*

8. See Clark, *Bill Douglas—A Portrait*, 28 BAYLOR L. REV. at 219 (1976).

9. Justice Douglas joined in opinions criticizing the Court's "two-tiered" method of equal protection analysis. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 70 (1973) (Marshall, J., joined by Douglas, J., dissenting). He also objected to the double standard in speech cases, whereby some speech was protected by the first amendment, while other speech was not. *Brandenburg v. Ohio*, 395 U.S. 444, 450 (1969) (Douglas, J., concurring) (political advocacy), *Roth v. United States*, 354 U.S. 476, 508 (1957) (Douglas, J., dissenting) (obscenity). He was also critical of a "two-track" law school admission system that did not make its decisions "on the basis of individual attributes." *DeFunis v. Odegaard*, 416 U.S. 312, 332 (1974) (Douglas, J., dissenting) (involving race preference in admissions process).

10. N. Y. Times, Nov. 13, 1975, at 60, col. 1 (Ford's letter of response to Douglas' letter of resignation); Burger, C.J., *Announcement of Death of Mr. Justice Douglas*, 100 S. Ct. cxxix (1980).

*nice—quite warm.*¹¹

Douglas' contributions to law have been honored, evaluated and critiqued¹² by a wide array of scholars¹³ and dilettantes¹⁴ alike. Those contributions are of great significance. But it is his contributions to the great debates of his time that were at the core of his special "presence" in the world community. Just as he exercised his body constantly, lest it become "puny"¹⁵ and weak, he constantly exercised the political rights he helped shape as a justice. "One suspects that he saw himself as more a teacher of the people than as a teacher of lawyers."¹⁶

It is this political Douglas that we need to remember. His "I dissent" rang out not only in judicial opinions, but in his broader advocacy on the issues of the day. Advocating the lost cause was his specialty, and his defense of the right of all to do so was his hallmark. He closed his touching autobiography by noting that humans are but "a tiny speck—a microcosm. We seek truth, and in that search, a medley of voices is essential. That is why the First Amendment is our most precious inheri-

11. See W.O. DOUGLAS, *supra* note 4, at 62. He spoke of "a residue of resentment of which I have never quite got rid—resentment against hypocrites . . ." *Id.*

12. Major bibliographies of Douglas' writings, and writings about him and his work, include Bulger, *William O. Douglas: A Bibliography*, appearing in IN HONOR OF JUSTICE DOUGLAS: A SYMPOSIUM ON INDIVIDUAL FREEDOM AND THE GOVERNMENT, 183-231 (R. H. Keller, Jr., ed. 1979); *Selected Bibliography*, appearing in B. WOLFMAN, J. SILVER, & M. A. SILVER, *DISSENT WITHOUT OPINION* 177-98 (1975).

13. See, e.g., V. COUNTRYMAN, *THE JUDICIAL RECORD OF JUSTICE WILLIAM O. DOUGLAS* (1974); Adler, *Toward a Constitutional Theory of Individuality: The Privacy Opinions of Justice Douglas*, 87 YALE L. J. 1579 (1978); Glennon, "Do Not Go Gentle": More Than An Epitaph, 22 WAYNE ST. L. REV. 1305 (1976); *Mr. Justice Douglas' Contributions to the Law*, 74 COLUM. L. REV. 353 (1974); *Symposium*, 16 U.C.L.A. L. REV. 699 (1969); Epstein, *Justice Douglas and Civil Liberties*, 1951 WIS. L. REV. 125 (1951). See also bibliographies cited in note 12 *supra*.

14. Hayakawa, Book Review, 50 BOSTON U.L. REV. 493 (1970); Hook, *Points of Confusion*, ENCOUNTER 45 (Sept. 1970).

15. Douglas had an ambivalent relationship with things "puny." In his autobiography he commented on his reaction to the combination of the lack of endurance in his legs during childhood and his mother's efforts to protect him from physical strain. "This solicitude set up a severe reaction. It seemed to me I was being publicly recognized as a puny person—a weakling. Gradually there began to grow in me a great rebellion." W. O. DOUGLAS, *supra* note 4, at 33. Yet, as he grew, it was the "puny" people of, first, this land, and then the world, who drew his "solicitude." He devoted most of his life struggling to improve their condition. See, e.g., *Brandenburg v. Ohio*, 395 U.S. 444, 450 (1969) (Douglas, J., concurring) ("Threats that were often loud but always puny . . ." *id.* at 454).

16. Ares, *supra* note 3, at 230.

tance.”¹⁷ His view of the first amendment was that “a function of free speech . . . 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.”¹⁸

Create dissatisfaction with conditions! Stir people to anger! William O. Douglas did that many times—sometimes he was honored, more often he was vilified. The “establishment” wanted more to get rid of Douglas for advocating more different ideas than almost any other public figure. But whether on economic development, foreign affairs, the environment or interpersonal relations, Douglas always took them on.¹⁹

INTERVIEWER: *The Iran crisis had begun as you were dying.²⁰ I guess you didn't pay much attention to it then. Have you taken any time to look at the problem?*

DOUGLAS: *I've been to Iran a number of times, you know. It is a fascinating country. And this hostage business is difficult—its a violation of international law, of course. But actually, when you consider that this all occurred in*

17. W.O. DOUGLAS, *supra* note 4, at 470.

18. *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

19. In addition to the impeachment efforts of 1970, *see* notes 32, 54, & 76 *infra*, efforts to remove him were made in connection with his stay of the Rosenbergs' execution, *N. Y. Times*, Jan. 20, 1980, at 1 & 28, col. 5; *NEW REPUBLIC* 6 (June 29, 1953); *NEWSWEEK* 27 (June 29, 1953); his suggestion that our government recognize the Peoples Republic of China, *Duke, supra* note 2, at 242; his financial affairs while a Justice, *N. Y. Times*, Oct. 18, 1966, at 31, col. 3; *N.Y. Times*, Aug. 5, 1970, at 15, col. 1; and his “morals,” particularly his fourth marriage, *N.Y. Times*, Jan. 20, 1980, at 1 & 28, col. 6; *N. Y. Times*, July 19, 1966, at 43, col. 1. Other establishment attacks on Douglas began in his S.E.C. days, *see* note 24 *infra*. *Financing Reforms Under Fire: Investment Bankers Cite S.E.C.'s Own Rules Against Douglas*, *BUSINESS WEEK* 34 (April 3, 1937) and included a demand for his impeachment by the Texas House of Representatives in 1950 because of a decision giving the federal government title to offshore oil, *N.Y. Times*, Jan. 20, 1980, at 1 & 28, col. 6.

20. More or less daily coverage of the crisis began during late 1978. The Shah of Iran was deposed and left Iran on January 16, 1979, *N. Y. Times*, Jan. 17, 1979, at 1, col. 6. Ayatollah R. Khomeini, political and spiritual leader, assumed power on return after 15 years in exile, *N. Y. Times*, Feb. 1, 1979, at 1, col. 4. On November 15, 1979, during a demonstration on the first anniversary of an attack by the Shah's security police on university students, some students seized the United States Embassy and took 90 Americans hostage, demanding the return, from the United States, of the Shah, who had entered a New York hospital for cancer surgery. *N. Y. Times*, Nov. 5, 1979, at 1, col. 4.

the context of a violent revolution; it seems to be quite a restrained action on the part of the Iranians. I warned that using our secret police, the CIA, to destroy democratic governments just to preserve some market for corporations and banks, would be disastrous.²¹

INTERVIEWER: *Can we prevent this from happening in the future?*

DOUGLAS: *It will be difficult. We have created and supported so many dictatorships since World War II that we have built up a large backlog of ill-will among the people of those countries. It happened recently in Nicaragua. We supported Somoza until virtually the last moment and then tried to manipulate the nature of the revolutionary forces there.²²*

INTERVIEWER: *Back to Iran.*

DOUGLAS: *We overthrew their government in 1953. We installed one of the worst dictators that that region has known. We created and trained their secret police—SAVAK—who killed and tortured thousands of Iranians for speaking out—for even thinking. The Shah robbed the country and its people. So, while I certainly don't approve of taking hostages, it is really*

21. W. O. DOUGLAS, TOWARDS A GLOBAL FEDERALISM 20, 74, 78, 79, & 120 (1968). "The clubs used in Iran to crack the skulls of dissidents are deeply engraved with the symbol 'Made in the USA.' While the CIA spent millions to overthrow Mossadegh, the "consideration" which the United States received was a 40% interest in the oil consortium . . ." *Id.* at 121. See also, *C.I.A. Secrecy Under Fire: Justice Douglas Is Critical*, U. S. NEWS & WORLD REPORT 12 (Dec. 24, 1962).

22. Douglas spoke of our foreign policy as one where "the ally with whom we end up is usually a dictator who uses his newly acquired weapons [from the United States] to strengthen his hold on his nation, to police his restless subjects, and to put down reformers." W. O. DOUGLAS, *supra* note 21, at 120. The programs for Latin America, in particular, served as "little more than a tool of the Establishment ensconced in Latin America." *Id.* at 139. The Nicaraguan dictator, General Somoza, vacationed in the United States in April, 1979, N. Y. Times, Apr. 9, 1979, at 4, col. 3, and then returned to have the Sandanista guerilla movement launch their final offensive in June. N. Y. Times, June 2, 1979, at 1, col. 1. The U. S. remained supportive of Somoza, or noncommittal, until the on-camera street execution of an ABC news correspondent. N. Y. Times, June 21, 1979, at 12, col. 1. The U.S. government then announced its desire to replace Somoza, N. Y. Times, June 22, 1979, at 1, col. 5, and attempted openly to affect the political complexion of the new government. N. Y. Times, July 16, 1979, at 1, col. 1.

quite a mild response to the intimate involvement of the United States with the Shah's repressive regime.²³ To avoid these events in the future, foreign policy decisions will have to be based on the mutual interest of developing democracy and economic strength in and for these nations—not on the basis of developing military and economic strength in other nations for U.S. corporate benefit.

At this point it is appropriate to step back to the 1970's—to the last decade we shared with Bill Douglas—and remember him not just as the Supreme Court Justice,²⁴ but as the political pamphleteer²⁵ and “advocate of rebellion.”²⁶

NIXON SENDS COMBAT FORCES TO
CAMBODIA TO
DRIVE COMMUNISTS FROM STAGING
ZONE
“Not An Invasion”²⁷

23. Douglas first visited Iran prior to the 1953 overthrow. See *With Justice Douglas in Iran*, LIFE 59 (Aug. 15, 1949). He commented in 1951 that the government had “extremely liberal ideas for the reconstruction of [the] country, and has recently announced the sale of the royal lands to the peasants.” He felt that the government at that time had “the highest degree of competence and the most liberal viewpoint in recent . . . history.” Douglas, *A World In Revolution*, NEW REPUBLIC 10 (Mar. 12, 1951). Years later he commented that, “[w]e indeed helped depose Mossedegh in Iran,” W. O. DOUGLAS, *supra* note 21, at 78-79. He commented on the brutality of the regime in his characteristically personal way.

“The Shah of Iran freely uses military courts to try civilians, contrary to the Iranian Constitution. Bamian Ghashghia, a student in California, returned to Tehran to obtain financial help to continue his studies here. He was arrested, charged with inciting revolution, tried before a military court, and immediately shot.” *Id.* at 46. For one of many articles on the long relationship between the United States and Iran, including SAVAK, Iran's secret police, see N. Y. Times, July 9, 1978, at 1, col. 4.

24. William Douglas practiced law for two years after graduating Columbia Law School. He returned as a professor to Columbia in 1927, but resigned a year later in a struggle with its President, Nicholas Murray Butler. He became Professor of Law at Yale from 1928-1934. He was appointed by his friend, F.D.R., to the Securities and Exchange Commission in 1934, as its Chairman in 1936, and to fill Louis Brandeis' seat on the Supreme Court in 1939. He served on the Court until 1974—thirty-six years—longer than any other Justice.

25. N. Y. Times, Apr. 11, 1970, at 33, col. 6. Douglas wrote 36 books after joining the Court, as well as innumerable articles, many on non-legal topics. See bibliographies cited in note 12 *supra*.

26. This label is attributed to Spiro Agnew. E. P. HOYT, WILLIAM O. DOUGLAS: A BIOGRAPHY 149 (1979). A similar comment is attributed to Professor Sidney Hook. N. Y. Times, Apr. 11, 1970, at 33, col. 6. See generally Hook, *supra* note 14.

27. N. Y. Times, May 1, 1970, at 1, col. 1-8.

BOMBING OF NORTH CALLED DEFENSIVE
Rogers and Agnew Describe
Raids as Protective²⁸

NEW HAVEN POLICE SET OFF TEAR GAS
AT
PANTHER RALLY²⁹

CAMPUS UNREST OVER WAR SPREADS
WITH
STRIKE CALL³⁰

4 KENT STATE STUDENTS KILLED BY
TROOPS³¹

REPRESENTATIVE FORD SAYS DECISION
BY PARTISAN GROUP IN HOUSE TO PRESS
FOR INVESTIGATION OF DOUGLAS' FIT-
NESS TO SERVE ON SUPREME COURT WAS
SPARKED BY HIS ARTICLE TAKEN FROM
POINTS OF REBELLION³²

As with the students and the Panthers, the "establishment" was out to get William Douglas.³³ *Points of Rebellion*, which expressed the very ideas that Johnson and Nixon had mustered all their resources to repress, gave the rebels of America aid and comfort. He had joined with the "puny anonymities"³⁴ whose ideas they hoped might spark a revolution.³⁵ Except that like

28. N. Y. Times, May 4, 1970, at 1, col. 7.

29. N. Y. Times, May 3, 1970, at 1, col. 4. See also N. Y. Times, May 4, 1970, at 1, col. 1.

30. N.Y. Times, May 4, 1970, at 1, col. 3-4.

31. N. Y. Times, May 5, 1970, at 1, col. 2-5.

32. N. Y. Times, Apr. 14, 1970, at 1, col. 4.

33. REPORT BY THE SPECIAL SUBCOMM. ON HOUSE RESOLUTION 920, ON ITS INVESTIGATION INTO THE POSSIBLE IMPEACHMENT OF ASSOCIATE JUSTICE WILLIAM O. DOUGLAS, 91ST CONG., 2D SESS. (June 20, 1970); *Impeaching Justice Douglas*, U.S. NEWS & WORLD REPORT 25 (Apr. 27, 1970). In addition to Gerald Ford, then minority leader of the House, who led the attack on Douglas, Representative Louis C. Wyman, House Republican from New Hampshire, was also at the fore. Justice Douglas and former Attorney General Wyman had run into each other previously. See *Uphaus v. Wyman*, 360 U.S. 72 (1959), 364 U.S. 388 (1960); *Wyman v. DeGregory*, 101 N.H. 171, 137 A.2d 512 (1957); *appeal dismissed*, 360 U.S. 717 (1958); *Wyman v. DeGregory*, 103 N.H. 214, 169 A.2d 1, *aff'd per curiam*, 368 U.S. 19 (1961), where Douglas, J., was always in the dissent. In *DeGregory v. Attorney Gen. of N.H.*, 383 U.S. 825 (1966), Douglas, now writing for the Court, found New Hampshire's interest in Mr. DeGregory's associational privacy "too remote and conjectural to override the guarantee of the First Amendment . . ." *Id.* at 830.

34. *Abrams v. U.S.*, 250 U.S. 616, 629 (1919) (Holmes, J., dissenting).

35. *Gitlow v. New York*, 268 U.S. 652, 669 (1925).

Eugene Debs, he was not anonymous, and millions heard him.³⁶

There is, I believe, a common suspicion among youth around the world that the design for living, fashioned for them by their politically bankrupt elders, destines them either to the nuclear incinerator or to a life filled with a constant fear of it.³⁷

INTERVIEWER: *May I ask you about Three Mile Island?³⁸ About your views on the peaceful use of atomic power in the 1980's?*

DOUGLAS: *I used to feel that the main problem with our nuclear policy was its primarily military use; that it focused on world destruction, both by the ultimate danger it presents and through the testing process that almost destroyed our environment. I now know the problem is broader than that. I never would have dropped the bomb on Japan, you know, but Truman listened to the military. And it's all been wrong since then.³⁹*

INTERVIEWER: *But what are the problems with our nuclear policy?*

DOUGLAS: *The two problems I now see more clearly than before are first, the terrible, terrible impact on our political freedom that our overall nuclear policy has had: the secrecy; the distortion; the threats—maybe even murders—to keep people from challenging atomic energy policy. Three Mile Island, and the Progressive—outrageous—and Karen Silkwood, and building atomic reactors on earthquake faults.⁴⁰ Second, I'm convinced that as long as*

36. *Debs v. U.S.*, 249 U.S. 211 (1919). While in jail, Debs received 919,799 votes as the Socialist candidate for President.

37. W. O. DOUGLAS, *POINTS OF REBELLION*, 39-40 (1970).

38. *N. Y. Times*, Mar. 28, 1979, at 1, 38, col. 2; *N. Y. Times*, Apr. 13, 1979, at 1, col. 1.

39. W. O. Douglas, *A.B.M.: Yes or No* (1969) (paper for the Center for the Study of Democratic Institutions). See Severeid, *supra* note 7, at 152. "We now face the dreadful realities of nuclear bombs that can destroy the life of the planet and render the earth sterile for eons of time." W. O. DOUGLAS, *AMERICA CHALLENGED* 43 (1960).

40. See note 38 *supra*. See also, on the *Progressive* case, *United States v. Progressive, Inc.*, 467 F. Supp. 990 (W.D. Wis. 1979); *Born Secret*, *THE PROGRESSIVE*,

bankers, corporate profit seekers, and the military control our policy the only appropriate course of action is to STOP—stop it all. No more reactors; shut them down; develop alternative energy sources—walk more. I think my next book will be on that.

INTERVIEWER: *Your next book?*

Douglas had for years spoken of revolution. He had often warned of its coming;⁴¹ he had urged the changes in society necessary to make revolution work “for the people”;⁴² he had for decades challenged the “new . . . totalitarianism”⁴³—the consistent promotion of materialism, conformism, and imperialism. Twenty years before *Points of Rebellion*, for example, he urged support for the revolution in Indo-China.

He saw then that the whole attempt to stop development of freedom and independence in Indo-China was doomed . . . The people there would not be content again to be under a colonial yoke . . . [T]here was no real alternative to Ho [Chi Minh].⁴⁴

Ten years before, he had attacked the “right or duty to conform”⁴⁵ and the “mass-minded[ness]”⁴⁶ that the government,

May 1979, at 12; on the Karen Silkwood case, N. Y. Times, May 19, 1979, at 1, col. 1 (jury awards Silkwood estate \$10.5 million against nuclear power company); *Who Killed Karen Silkwood*, PEOPLE 32 (June 4, 1979); *Silkwood Mystery*, TIME 47 (Jan. 20, 1975); and on atomic energy facilities near earthquake faults, N. Y. Times, Mar. 14, 1979, at 1, col. 3.

41. The world is headed for great revolutionary convulsions. It is not a choice between peaceful revolution and evolution, but a choice between peaceful revolution and violent revolution. At times the yoke on the back of the people is religious, at times military, at times feudal, and these three often combine.

W. O. DOUGLAS, *supra* note 21, at 20. See also W. O. DOUGLAS, HOLOCAUST OR HEMISPHERIC CO-OP: CROSS CURRENTS IN LATIN AMERICA (1971).

42. W. O. DOUGLAS, *supra* note 21, at 20.

43. “It is a uniform society that Madison Avenue promotes The great financial rewards go to those who can train people in understanding and manipulating response and behavior patterns This is a new form of totalitarianism, and almost as debilitating as any other.” W. O. DOUGLAS, AMERICA CHALLENGED, *supra* note 39, at 16-17. “America, in its action abroad, became more ‘imperialistic’ than the British at their worst.” W. O. DOUGLAS, *supra* note 4, at 402.

44. HOYT, *supra* note 26, at 125. See also W. O. DOUGLAS, NORTH FROM MALAYA: ADVENTURE ON FIVE FRONTS (1953).

45. W. O. DOUGLAS, AMERICA CHALLENGED, *supra* note 39, at 5.

46. *Id.* at 17.

Madison Avenue, and television attempted to enforce on the people. Colleges, he persuasively argued, had reached the "lowest common denominator of acceptable viewpoints,"⁴⁷ and "television cater[ed] to moronic standards."⁴⁸ This kind of society, he said, "shuns ferment and turmoil . . . none can accuse us of trafficking in ideas that are dangerous."⁴⁹ He worried that "orthodoxy and conformity" had made the national climate unfavorable for revolt.⁵⁰ Yet, he wrote that the "right of revolution is, of course, deep in our traditions."⁵¹

But 1970 was different. He spoke to a larger audience. And they listened. History and William Douglas' ideas had joined, and his message warned of how close we were coming to Orwell's Oceania.⁵² The country "is in the grip of an unresponsive militaristic 'establishment' seeking to impose 'mediocrity and conformity' through a variety of assaults on freedom of speech."⁵³

In 1970, the "establishment" targeted William Douglas for impeachment. His ideas were too volatile. "Mr. Ford told reporters that the decision to press for a Douglas investigation had been touched off by the appearance of an article by the . . . Justice in the . . . Evergreen Review."⁵⁴ The article, "Redress and Revolution" was excerpted from *Points of Rebellion*. And the ideas "invited dispute."⁵⁵

George III was the symbol against which our founders made a revolution now considered bright and glorious . . . We must realize that today's Establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, is also revolution.⁵⁶

47. *Id.* at 18.

48. *Id.* at 19.

49. *Id.* at 18.

50. *Id.* at 5.

51. *Id.* On our revolutionary tradition, see, Clark, Book Review, 83 HARV. L. REV. 1931 (1970) (reviewing POINTS OF REBELLION).

52. G. ORWELL, 1984 (1949).

53. N. Y. Times, Apr. 11, 1970, at 33, col. 6.

54. N. Y. Times, Apr. 14, 1970, at 27, col. 2.

55. See generally *Terminiello v. Chicago*, 337 U.S. 1 (1949).

56. W.O. DOUGLAS, note 37, at 95. Representative Wyman, a leader of the impeachment movement, see generally note 33 *supra*, was particularly disturbed by the following passage: "where grievances pile high and most of the elected spokesmen represent the

The Justice warned against the growing subservience of society to the machine; of electronic surveillance; of the exploitation of the poor; of the oppressive government bureaucracy operating primarily on behalf of the rich; and of the CIA and secret government.⁵⁷

INTERVIEWER: *You have frequently mentioned secrecy and secret police. It seems to be at the core of your ideas.*

DOUGLAS: *No! it is no part of my ideas even though it seems to be at the core of most of our important government policies and actions. They are two separate problems—the CIA, SAVAK, and the use of secret police on one hand, and “secrecy” in government on the other—but they are certainly related. Sort of the Siamese twins of totalitarianism.⁵⁸*

INTERVIEWER: *Well, secret police, then?*

DOUGLAS: *Our foreign policy toward most Third World or underdeveloped countries is based in significant part on secret police. The CIA is the most active U.S. force in many places. It installs governments; it topples governments. These actions are secret and often have no relation to the democratic desires of the people in these countries. Moreover, we train, equip and assist secret police for every petty dictator. It is the very antithesis of democracy.⁵⁹ And we do the same thing in our country to destroy dissent and criticism.⁶⁰*

Establishment, violence may be the only effective response.” *Id.* at 88-89.

57. *Id.* at 10 (subservience to machines), at 29 (electronic surveillance), at 47 (exploitation of the poor), at 64 (bureaucracy for the rich), and at 21 & 94 (CIA, FBI).

58. Kaplan & Halliday, *SAVAK & the CIA*, *NATION*, Mar., 1, 1980, at 229; Baraheni, *The SAVAK Documents*, *NATION*, Feb. 23, 1980, at 193; *NATION*, Feb. 23, 1980, at 197 (FOIA under attack by the CIA).

59. See notes 22 & 23 *supra*. Burns & Morales, *The New Cold War is Heating Up U.S. Activity in Latin America*, *Independent and Gazette*, Mar. 3, 1980, at 7, col. 1.

60. Douglas’ feeling on political surveillance is captured in the following famous quotation:

This case involves a cancer in our body politic. It is a measure of the disease which afflicts us Those who already walk submissively will say there is no cause for alarm. But submis-

INTERVIEWER: *What about government secrecy—how do you view what's happening?*

DOUGLAS: *It is quite sad—and quite frightening. And I'm saddest about the Court. I expect the military and the bureaucrats to cry for secrecy—they always have. The redemption was partly the Freedom of Information Act, one of the most important statutes ever passed.⁶¹ But mostly, it was the Court. I thought the Pentagon Papers case made it clear that secrecy in government is the antithesis of an open society.⁶²*

INTERVIEWER: *But?*

DOUGLAS: *I'm afraid my friends Bill Brennan, and Thurgood Marshall, are calling out in the dark. The decisions of the Court in this area sound as if they were made by petty bureaucrats, not justices announcing constitutional and democratic values.⁶³*

siveness is not our heritage. The First Amendment was designed to allow rebellion to remain as our heritage. The Constitution was designed to keep government off the backs of the people. The Bill of Rights was added to keep the precincts of belief and expression, of the press, of political and social activities free from surveillance.

Laird v. Tatum, 408 U.S. 1, 28 (1972) (Douglas, J., dissenting) (involving extensive political surveillance by Army of civilian activity). *See also* Douglas, *Preface to Symposium: Law and Technology* 45 U.S. CALIF. L. REV. i (1972); M. H. HALPERIN, *THE LAWLESS STATE: THE CRIMES OF U.S. INTELLIGENCE AGENCIES* (1976); *Police Surveillance of Political Activity: Controls Through Litigation and Legislation*, 55 U. OF DET. J. URB. L. 853 (1978).

61. 5 U.S.C. § 552 (1974).

62. The dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information . . . Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors.

New York Times Co. v. United States, 403 U.S. 713, 723-24 (1971) (Douglas, J., concurring).

63. *See, e.g., Forsham v. Harris*, 48 U.S.L.W. 4232 (1980),

But the Court's approach must inevitably undermine FOIA's great purpose of exposing Government to the people. It is unavoidable that as the work of federal agencies mushrooms . . . the agencies must look to outside organizations to assist . . . If the records of such organizations . . . are immune from public inspection, then government by secrecy must surely return.

Id. at 4238 (Brennan, J., and Marshall, J., dissenting).

INTERVIEWER: *Are there examples you can give us?*

DOUGLAS: *Oh, God. I can't even think of them all. The whole series of cases that deny access to information about government activities to the press, to the people.⁶⁴ The narrow interpretations of the FOIA exemptions—in almost every case favoring the hiding of more information.⁶⁵ Now, for example, all an official or agency that is subject to the FOIA has to do is give the records, the information, to someone who isn't subject to the Act.⁶⁶ Even worse is that case which says that all the government has to do is pay private enterprise to develop or maintain important information, and as long as the government agency doesn't take custody, it's all secret.⁶⁷ I'm afraid the principles of the first amendment and open government are receiving attention mostly by ignoring them.*

The basic quality that endeared and connected William Douglas to the poor and rebellious of the world—as well as to the American dissenters of 1970—was that he always fought back. He fought back as a child when he could barely walk;⁶⁸ he fought back as a young man when Sacco and Vanzetti were “unfairly tried and . . . convicted”;⁶⁹ he fought back against entrenched business interests when he was at the S.E.C.;⁷⁰ he fought back against McCarthyism—most valiantly when he

64. *Gannett Co. v. DePasquale*, 99 S. Ct. 2898 (1979); *Houchins v. KQED*, 438 U.S. 1 (1978); *Pell v. Procunier*, 417 U.S. 817 (1974); *Saxbe v. Washington Post Co.*, 417 U.S. 843 (1974).

65. See generally Epstein, *Government Secrecy That's Sanctioned by Supreme Court*, S.F. Examiner of Chronicle, at 8, col. 1 (Section B).

66. *Kissinger v. Reporters Committee for Freedom of the Press*, 48 U.S.L.W. 4223 (1980).

67. *Forsham v. Harris*, 48 U.S.L.W. 4232 (1980).

68. See notes 4 & 15 *supra*. Just as he came into the world fighting, he left the same way. “I last saw Justice Douglas within the hour before he returned to the hospital and at that time I could see no lessening of that firm even fierce, determination he showed in every contest of his life. He fought to the very end as he had always done.” Burger, C.J., *Announcement of Death of Mr. Justice Douglas*, 100 S. Ct. cxxix (Jan. 21, 1980).

69. See W. O. DOUGLAS, *supra* note 4, at 167.

70. *Termites of High Finance*, VITAL SPEECHES OF THE DAY 86 (Nov. 15, 1936); *The Lawyer and Reorganizations*, 1 NAT. LAWYERS GUILD Q. 31 (1937).

stayed the execution of the Rosenbergs;⁷¹ and he fought back when Nixon, Agnew, and Ford sought his impeachment in 1970.

He told a 1970 symposium at the Brooklyn Law School on *Points of Rebellion*, for example, that anyone upset by the book should "not even open the next one."⁷² He promised it would be "very, very upsetting."⁷³ After reasserting the central thesis of *Points of Rebellion*,⁷⁴ he exclaimed

We have an idea that the way to solve the problems of the world is to sell them goods, American goods preferably . . . Our greatest contributions abroad—apart from expeditionary forces—have been Coca Cola and comic books.⁷⁵

He survived the attempt at impeachment⁷⁶ and fought back shortly thereafter with two additional provocative volumes focusing on international points of rebellion, one specially focusing on our Latin American neighbors.⁷⁷

INTERVIEWER: *Do you think U.S. policy toward Latin America has improved since you wrote about this in the early 70's?*

DOUGLAS: *No! The CIA and State Department helped overthrow the democratic government of Chile, ending 180 years of constitutional government in that land.⁷⁸ They supported Nicaragua's dictator Somoza to the bitter end, and*

71. The stay order is printed as an appendix to Douglas' dissent in *Rosenberg v. United States*, 346 U.S. 273, 310, 313 (1953).

72. N. Y. Times, Apr. 11, 1970, at 33, col. 6.

73. *Id.*

74. See note 53 *supra* and accompanying text.

75. See note 72 *supra*. For current verifications of Douglas' thesis, see N.Y. Times, Apr. 19, 1978, sec. III, at 1, col. 3 (Coca-Cola aggressively expanding into Middle East and U.S.S.R.; has concession at 1980 Moscow Olympics through Carter connection), N. Y. Times, Jan. 11, 1978, sec. IV, at 9, col. 3 (U.S.S.R. and Pepsi Cola sign agreement to double plants in U.S.S.R.), N. Y. Times, July 15, 1978, at 27, col. 5 (Dr. Pepper produces soft drinks in Jordan for Middle East).

76. See FINAL REPORT BY THE SPECIAL SUBCOMM. ON HOUSE RESOLUTION 920, 91ST CONG., 2D SESS. (Sept. 17, 1970). See also, *Justice Douglas: No Evidence to Support Impeachment*, NEW REPUBLIC 13 (Jan. 2, 1971).

77. See W. O. DOUGLAS, HOLOCAUST OR HEMISPHERIC CO-OP: CROSSCURRENTS IN LATIN AMERICA (1971); and W. O. DOUGLAS, INTERNATIONAL DISSSENT: SIX STEPS TOWARD WORLD PEACE (1971).

78. See note 77 *supra*. See also, Kurzman, *Gamble In the Andes for Democratic Marxism*, SATURDAY REV. 61 (Jan. 22, 1972).

when it was clear he would fall, tried to interfere with the people's revolt.⁷⁹ And the same mistakes are now being made in Guatemala and El Salvador.⁸⁰

INTERVIEWER: *Could you reiterate your solutions?*

DOUGLAS: *Just read the books. I've talked about it for 30 years. Right wing dictators, feudal lords are supported; secret police are trained and equipped. If we don't begin to side with the peasants over the landlords, the workers over the military, Latin American countries will view us, as does much of the rest of the world—as a modern day Ghenghis Khan⁸¹—goose-stepping around the world, failing in our attempts at military and secret police solutions to sensitive political problems.⁸²*

Justice Hugo Black is quoted as believing that his friend "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."⁸³ William Douglas learned to protest at an early age. His identity with the dissenters of our land was not vicarious. During his teens and early twenties, he worked harvest crews with migrants, rode the rails with hobos, hiked the wilderness with Indians, and befriended many Wobblies, or I.W.W.'s—the Industrial Workers of the World.⁸⁴ The systematic destruction of the I.W.W. is one of the most vicious chapters of American history.⁸⁵ He speaks of these workers and friends as

79. See note 22 *supra*.

80. See note 59 *supra*; Arnson, *El Salvador on the Brink*, NATION, Mar., 8, 1980, at 274; Koepfel, *Face Off In El Salvador*, NATION, Mar., 8, 1980, at 274; Brown, *Guatemala—The Next Nicaragua?*, NATION, Aug. 25, 1979, at 138. N. Y. Times, Oct. 17, 1979, at 10, col. 3 (U. S. gives friendly reception to military coup in El Salvador); and S.F. Chronicle, Apr. 1, 1980, at 13, col. 1 (U.S. Archbishop accuses military junta of assassination of dissenting El Salvador Archbishop, and of attack on 50,000 person funeral mass).

81. W. O. DOUGLAS, *supra* note 21, at 23.

82. W. O. DOUGLAS, *supra* note 37, at 16.

83. N. Y. Times, Jan. 20, 1980, at 28, col. 2.

84. See W. O. DOUGLAS, note 4, at 71, 75.

85. See generally, Z. CHAFFEE, *FREE SPEECH IN THE UNITED STATES* (1941); M. DUBOFSKY, *WE SHALL BE ALL: A HISTORY OF THE INDUSTRIAL WORKERS OF THE WORLD* (1969); and P. BRISSENDEN, *THE I.W.W.: A STUDY IN AMERICAN SYNDICALISM* (1919).

“a group of outcasts who made a very deep impression on me.”⁸⁶ Bill Douglas was with them. He observed the repression against them first hand; he experienced their grievances. He began to see how the government represented the economically strong.

The police . . . represented the ultimate personality of the Establishment . . . They were harsh and relentless and bore down heavily on the non-conformist . . . I knew their victims too intimately to align myself with the police. My heart was with the impoverished, restless underdogs, who were I.W.W.'s . . . [W]e were all treated as outcasts or vagrants; we were even fired on by police in railroad yards.⁸⁷

John Dos Passos recalled these times even more vividly. In 1919, he told of the execution of Joe Hill,⁸⁸ songwriter-union leader, and the brutal police attacks on I.W.W. meetings and picnics,⁸⁹ and the castration and hanging of famous I.W.W. organizer, Wesley Everest, near Centralia, Washington, on Armistice Day, 1919.⁹⁰ Douglas knew about these things, and he never forgot.

INTERVIEWER: *Is our democracy healthy?*

DOUGLAS: *I'm a little worried. Our government so often seems on the wrong side. It supports the rich against the poor; the conformist against the outcast; the users of military force against the rightful rebellions of the world's people. And it represses those who challenge that course.*

INTERVIEWER: *Any prescriptions?*

DOUGLAS: *Well, as long as the people speak out—fight back—refuse to be intimidated—democracy will be fine. There will be attempts at silenc-*

86. W. O. DOUGLAS, note 4, at 75.

87. *Id.* at 78.

88. J. DOS PASSOS, NINETEEN NINETEEN 420 (1969).

89. *Id.* at 421-448.

90. As Wesley Everest lay stunned in the bottom of the car, a Centralia businessman cut his penis and testicles off with a razor . . . Then they hanged him from the bridge in the glare of the headlights . . . They jammed the mangled wreckage into a packing box and buried it. Nobody knows where . . .

Id. at 456. Douglas' account of the Centralia incident can be found in W. O. DOUGLAS, *supra* note 4, at 81-82.

ing the people. It happened when the Alien and Sedition Acts were enforced; it happened in the Red Scare after World War I; it happened during McCarthy and the cold war. But when democracy begins to get a little sick, the first amendment is the best medicine—more dissent, people moving to control their own lives, and more organizing to struggle against government excess and militarism.

INTERVIEWER: *You're sounding like those Wobblies of your youth. Dying hasn't mellowed you much.*

DOUGLAS: *I should hope not! The I.W.W.'s! Yes. Fine! That's a fine compliment. I hope, like Joe Hill, I didn't die.⁹¹*

91. I dreamed I saw Joe Hill last night,
 Alive as you and me.
 Says I, "But Joe, you're ten years dead,"
 "I never died," says he,
 "I never died," says he.

Robinson & Hayes, "Joe Hill" (Copyright 1938, Leeds Music).