

Indeed, despite his vast intellectual attainments, Douglas is not primarily a cerebral man. Wisdom, to him, is worthless in the abstract; knowledge does not deserve a page of reading or five seconds of thought if it is not directly and intimately related to the stuff of life—to people and events and tangible things. To the despair of some sedentary legal pedants, he is a man of action and decision rather than contemplation. He is also a man of tremendous physical and intellectual courage, afraid of no person, no situation, no idea. Reared on the American frontier, he has the drive and down-to-earth practicality and adventurous spirit of a frontiersman—and he carries these over to the work he does with his mind. The nation is lucky to have had his strength devoted to its service for so long—as presumably it will be for many years to come. And it is rare treat for one of his friends to be able to pay here this sketchy anniversary tribute to a great and an extraordinary man.

## JUSTICE DOUGLAS: A LAW CLERK'S VIEW

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I WAS Justice Douglas' law clerk for a single term of court. This is an extremely short period of time, in which conclusions drawn about the man are apt to be fragmentary.<sup>1</sup> But it was long enough, for me, to form lasting impressions.

In recent years, eight Justices of the United States Supreme Court have employed at least two law clerks. This is a "luxury" with which Justice Douglas can dispense, for he is able to handle his responsibilities as a judge, particularly in the writing of opinions, in less time than other judges. Opinions are written in longhand—a kind of hieroglyphic taking considerable practice to decipher but which is written with the speed of shorthand. He has an uncanny knack of putting his finger on the essential issue of a confusing and difficult problem, and he has an easy, fluid writing style which expresses his thoughts accurately. The

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<sup>1</sup> While twenty years is a significant slice of time, in this case it is largely one arbitrarily limited. For a man who ascended the bench at the age of forty, the first twenty years of judicial service can be entitled just that—the first twenty years. The impact of a judge is difficult to appraise during his tenure on the bench, especially when he has many years of active service ahead of him. Moreover, in twenty years of the Supreme Court, a Justice is called upon to express judgment upon a myriad of legal problems. Since 1939 Justice Douglas has left his mark in such diverse areas, among others, as administrative law, anti-trust law, bankruptcy, criminal law, the law of domestic relations and the law of obscenity. Discussion of the totality of his contribution to the Court and to the law over two decades is inappropriate here, in the limited time and space available to me. And I must leave to others, whose association with him has been longer and more intimate than mine, the close personal appraisal of the man.

key log in the intellectual log jam of a confusing and complex case is discovered, examined and put back in its proper perspective. Now the rest moves easily. He has not become snagged on the minutia of the problem. But this never indicates an impatience with careful legal craftsmanship. He is the master, not the slave, of the technicalities of his subject. Nor is there a cavalier disregard for detail. Particularly, each statement of fact must be checked carefully against the record in the case. Discussion of background state law must be scrupulously accurate. His law clerk soon learns that the one failing that can never be excused is the imprecise and inaccurate utilization of legal material.

The more irresponsible among recent critics of the Court have added to their grievances an allegation that much of the Court's error can be traced to starry-eyed liberal law clerks who, behind the scenes, do most of the work. Such a statement is preposterous.<sup>2</sup> Certainly, it carries not even a grain of truth as applied to the method of Justice Douglas' work.<sup>3</sup> My own suggestions would be considered and, more often than not, rejected when a few probing questions demonstrated their intellectual bankruptcy. Normally, the initial circulation of a Douglas opinion to the chambers of other Justices would, save for few formal modifications, be identical to the first handwritten draft. I was allowed to try my hand at a first draft of two or three of the least significant dissents. But the Justice was willing to entrust a first draft of a minor opinion to less capable hands only when he had thoroughly explained his position and had clearly marked the path to be followed. Even then, the finished product might bear less than a family resemblance to my first efforts.

The efficiency with which judicial business is dispatched leaves energy for other interests. In this, Justice Douglas has much in common with Holmes.

Once an opinion was assigned to him, Holmes was miserable until he finished it. . . . Holmes worked with such intensity that he would often have his proof sheets ready to distribute three days after getting an assignment. While most of the Justices were laboring on their opinions during the recess, Holmes was thus free after a few days to indulge his passion for philosophy, social theory, and fiction.<sup>4</sup>

Justice Douglas normally circulates proof of an opinion, in the less-involved cases, the same week that the assignment was received. He completes his load of Court opinions long before the end of the term and will have his desk relatively free of Court work at a time when other Justices are laboring long hours

<sup>2</sup> The clerk's role is necessarily minimal. The Justices have mature judicial philosophies and the judgment which can not be subverted by the notions of law clerks who are recent law graduates with limited experience. Any influence exercised is in the molding of the younger man. My observation was that the clerks serving during the 1956 Term, in those cases which caused the furor, were less "liberal" as a group than the Court majority.

<sup>3</sup> Former clerks for other Justices have been quick to point out that the charge totally lacks substance. See, *e.g.*, Frank, *The Marble Palace* 118 (1958).

<sup>4</sup> Pusey, Charles Evans Hughes 285 (1951).

to finish before the summer recess.<sup>5</sup> There have been suggestions that the writing of nine books in nine years,<sup>6</sup> extensive travel, lectures and personal appearances, and innumerable articles—activities which would alone more than task the capabilities of a lesser man—demonstrate that Justice Douglas has avoided his judicial responsibilities. They are the mark, rather, of a man whose boundless energy is matched only by the breadth of his intellectual horizons. These are the qualities of mind which explain why he has not been content to confine his attention solely to the legal and political problems which come before the Court for decision. The buzzer for me from the Justice's chamber, or the note from bench or conference, would usually mean that I was asked to find a particular citation or, perhaps, to write a memorandum on some narrow point of law. But, at times, I might be asked to ascertain the height of a Himalayan peak, the reign of a Roman emperor or whether the Pennsylvania Constitution of 1776 had been ratified. The breadth of the man was best illustrated to me by our occasional talks, particularly on Saturday when we would have lunch across the street from the Court building. During the walk over, he might stop and chat with the gardener about the most efficient method to maintain the shrubbery about the building. He might point out to me some obscure plant, name it and comment that it was an excellent representative of its species. At lunch we might discuss a legal point involved in a pending case or incidents in the Court's recent history. But the discussion would often range much further than the work of the Court—from the art of hiking and the necessity of preserving wilderness areas inviolate to the problems of land reform in Pakistan, American foreign policy and the current presidential campaign. He would speak with informed authority about the flora of Iran<sup>7</sup> as well as the intricacies of corporate finance. He taught me that, in an age of specialists, the full life cannot be found in learning more and more about less and less.

I think William O. Douglas is no less the Justice because he is more the man.

<sup>5</sup> Toward the end of the term, I mentioned to some of my fellow clerks, who had been working long into the night, that Justice Douglas had only one majority opinion to complete. They told me that it had been circulated that morning.

<sup>6</sup> *West of the Indus* (1958); *The Right of the People* (1958); *Russian Journey* (1956); *We the Judges* (1956); *An Almanac of Liberty* (1954); *Beyond the High Himalayas* (1954); *North from Malaya* (1953); *Strange Lands and Friendly People* (1951); *Of Men and Mountains* (1950).

<sup>7</sup> His personal collection of Iranian wildflowers was presented to the National Herbarium in Washington, D.C.