

Protecting American Lands with Justice William O. Douglas

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TAKE A YEAR IN AMERICA IN THE MID-TWENTIETH CENTURY—SAY, 1939. Now, imagine yourself there with strong feelings about the natural world; perhaps you enjoy backpacking or river-rafting, hunting or fly-fishing. Much alarms you. With the permission of the local District or Regional Forester, logging companies build more roads into wild places and cut millions of acres on western public lands. Government bureaus and private power companies dam(n) rivers nationwide in a race to develop every last stretch of river, feed power to growing urban centers, and direct subsidized water into farmers' fields. New, synthetic chemicals—DDT most notoriously—pollute streams and lakes, kill trout, and make waterways unswimmable and undrinkable. The atmosphere, too, clouds over with unhealthy, even deadly, smog in places like Donora, Pennsylvania, and Los Angeles, California. Even some national parks face overdevelopment with more roads, more hotels, more cars. No wilderness area is nationally protected. No federal agency regulates pollution. And besides voting, as a US citizen you have few avenues available to you to express your concerns, register complaints, or offer alternatives.¹

Take another year in the mid-to-late twentieth century, say, 1975. All of that has changed. To be sure, there is still logging and damming and polluting, but the institutional, legal, and political worlds have utterly transformed. Now, there is a national wilderness preservation system, an Environmental Protection Agency, and environmental impact statement and public hearing requirements from the National Environmental Policy Act. This revolution requires an explanation. I am convinced that the life of William O. Douglas (1898–1980), associate justice of the US Supreme Court, offers important clues about that transformation.² For protected lands—national parks, national forests, wilderness, even urban parks—Douglas served as a benchmark on the bench, a standard-bearer with a pulse on progress and a participant who could speak without peer to the public and politicians.

The George Wright Forum, vol. 32, no. 2, pp. 165–173 (2015).

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DOUGLAS SAT ON THE US SUPREME COURT LONGER THAN ANY JUSTICE IN HISTORY, from 1939 to 1975. He hailed from Yakima, Washington, of humble background, growing up with a brother, a sister, and a widowed mother. A sickly child, Douglas compensated by excelling in academics. However, longing to be—and be seen as—strong, he overcame his physical weakness, according to a story he frequently told, by hiking in the nearby Cascade Mountain foothills. He resolved to use the hills to build strength; Douglas explained, “First I tried to go up the hills without stopping. When I conquered that, I tried to go up without change of pace. When that was achieved, I practiced going up not only without a change of pace but whistling as I went.” Such a story created a public image of Douglas as a strong individualist who could accomplish whatever he set out to. Other stories of 25- and 40-mile hikes and dangerous mountain climbing established him as a consummate outdoor figure, an image he crafted throughout his career and rooted in lived experience on trails and rivers across the land.³

When Douglas joined the court in the waning days of the Great Depression, he arrived at a time when protected lands did not garner much public policy attention. Douglas made his presence known in other ways on and off the court. Indeed, no one who paid attention to public life in the 1940s and 1950s could miss that Douglas courted publicity. His world travels and subsequent best-selling books, his appearance on the TV game show “What’s My Line” and in various national media features, his controversial political statements both as part of and outside of his day job on the court—all of these activities and more demonstrated the justice’s aptitude for getting attention.⁴

Even though the American wilderness movement set down strong roots in the inter-war era, 15 years passed with Douglas on the Supreme Court before he began serious work related to environmental protection.⁵ When he first started advocating in earnest about environmental matters, he entered a community not that well defined, not that large, not that well endowed, and, frankly, not that successful. Accordingly, one immediate goal had to be publicity. Douglas proved to be an ideal figure with his national reputation, political clout, and practiced eloquence.

Douglas launched his role in public environmental protest in typical iconoclastic fashion, on the editorial page of the *Washington Post*. The Chesapeake & Ohio (C&O) Canal story is Douglas’s best-known contribution to the protected landscape of America. The National Park Service thought a highway along the canal would improve recreational opportunities, and the *Post* agreed it would “open up the greatest scenic asset in this area . . . to wider public enjoyment.”⁶

Such a plan struck a nerve deep in Douglas. He wrote to the newspaper to describe why the C&O Canal deserved protection, not development. Drawing on religious imagery (common in American nature writing) of the canal as a “refuge” and “retreat,” Douglas warned the *Post* editors that “[f]ishermen, hunters, hikers, campers, ornithologists, and others who like to get acquainted with nature first-hand and on their own are opposed to making a highway out of this sanctuary.” Note here the expansive and diverse group of stakeholders—bird watchers and hunters, fishermen and hikers—bespeaking a broad conservationist coalition. Confident in the transformative power of walking in the woods, Douglas challenged the edi-

torial writer to walk along the entire canal. “I feel that if your editor did,” the justice intoned, “he would return a new man and use the power of your great editorial page to help keep this sanctuary untouched.”⁷

The gambit worked. Perhaps to save face publicly, *Post* editors accepted and soon newspapermen, renowned conservationists, and Justice Douglas ambled—rather quickly (between 21 and 29 miles a day)—the 189-mile length during a rainy week in late March 1954, creating something of a media event that transformed public opinion. The *Post* altered its position, but for decades Douglas did not let up and continued leading reunion hikes, making speeches, and writing articles. In 1961, President Dwight Eisenhower protected the canal as a national monument, which was but an intermediate step until Congress passed legislation signed in 1971 making it a national historical park. In 1975, just after Douglas’s retirement, Congress dedicated the C&O Canal to Douglas, and two years later a commemorative bust of Douglas was unveiled in Georgetown. Protecting the C&O Canal marked an important point in American conservation history, and Justice Douglas’s involvement was crucial. In effect, he legitimated a nascent wilderness movement struggling to gain respectability and be seen as something beyond just birdwatchers. Among other things, Douglas became well acquainted along the hike with leading conservationists, including Harvey Broome (a founder of the Wilderness Society), Olaus Murie (a president of the Wilderness Society), Howard Zahniser (the executive secretary of the Wilderness Society), and Sigurd Olson (president of the National Parks Association). Among them all developed a warm, mutual friendship. This friendship served the conservation movement well, for no one so visible in public life could match Douglas’s commitment.⁸

But this prominent protest that ended in the nation’s capital—and another one much like it on the opposite coast four years later—was but the tip of the iceberg.⁹ Douglas’s travel to international outbacks shifted to more American backcountry spots. Two books published in the early 1960s reported on these places—places Douglas believed needed protection, or better protection, from federal agencies. In writing these popular books, one of which was nominated for the National Book Award, Douglas helped educate and expose a large audience to conservation hotspots. They learned about Baboquivari in Arizona, where he felt awash in the “deep solitude of the universe.” And about Maine, near the Canadian border, where, he thought, “the Allagash [River] can serve man by renewing his strength, by broadening his horizons, by teaching him that he is only a part of life far greater and richer than his own.” Readers learned about Oregon’s Hart Mountain and the cheatgrass invading the range and issues of predator control. They were taught about the national forest policy of multiple use in Wyoming’s Wind River Mountains where, Douglas maintained, “‘multiple’ use was semantics for making cattlemen, sheepmen, lumbermen, miners the main beneficiaries.... On Piñon Ridge, I realized that the pretense of ‘multiple’ use as applied in this area ... was an awful wrong.” Readers found out that on western rangelands federal agents poisoned mice and squirrels, but the poison also killed blackbirds and doves, and that meant the grasshoppers increased, so agents poisoned them too. “Man and his sprays may be the end of us yet,” Douglas quoted Murie, his companion in those mountains, as saying. Majestic places, ecological lessons, management debacles—these Douglas introduced to Americans. He helped

prepare them to demand change when it was needed, as well as protection for these majestic places and other lands, at a time when too few knew either the issues or the places.¹⁰

So, when called, he went. Or, just as often, he went and then called others. On these sojourns were giants in American conservation. He traipsed through the Arctic Brooks Range in 1956, alongside biologists and wilderness advocates Olaus and Mardy Murie; at the time Olaus presided over the Wilderness Society. He hiked the Sierra Nevadas with the Sierra Club Executive Director David Brower. He hiked the Smoky Mountains with Wilderness Society co-founder Harvey Broome and canoed the Boundary Waters with soon-to-be Wilderness Society President Sigurd Olson. Douglas didn't only recreate with luminaries. He went to Santa Elena Canyon in the Big Bend country of Texas in 1965 with Jim Bowmer and Bob Burtleson, lawyers and outdoor enthusiasts who invited him without prior personal connections and became lifelong friends.¹¹

In one 1967 instance, Douglas and his wife, Cathleen Heffernan Douglas, led a “camp-in,” as the local press dubbed it, near Darrington, Washington. The event was designed to protest a proposed Kennecott Copper open-pit mine in the Glacier Peak Wilderness Area. The conflict of Kennecott Copper and wilderness garnered national attention and opens John McPhee's classic *Encounters with the Archdruid*, describing Brower's efforts on wilderness's behalf. The Douglases and “a band of 150 adults, kids, dogs and an assortment of people wearing beards and beads” faced counter-protesters—even rumors of violence—as they came through a town with banners strung across the road reading, “Welcome Kennecott.” Near the Sulphur Creek Campground, Douglas spoke to a crowd, and he dabbled in ethics and economics, philosophy and history, explaining that Kennecott's mine would be legal, “but just because something's legal doesn't necessarily mean it's right. We operate today on a dollar economy by leveling our frontier, but the frontier is just about gone.” Rhetoric and circumstances like these were Douglas's special gift for American conservation—passionate, direct, and, most importantly, public.¹²

Time was running out for wilderness everywhere. In the 1950s, the US Forest Service began a reclassification process—a crisis to most conservationists—where the agency began reconsidering the status of certain areas in the national forests, opening some protected wild areas to road-building and timber-cutting. As the agency reclassified landscapes, it made them more vulnerable to extractive industry and foreclosed opportunities for wilderness status. This was the critical backdrop to Douglas's work. The places he visited and reported on in his *My Wilderness* books typically enjoyed some protection in a national forest, but as reclassification demonstrated, this protected status could be changed. Reclassification amounted to a major impetus for the Wilderness Act. Until 1964, land in some sort of wilderness status did not enjoy permanent protection; the Wilderness Act changed that. Before that, protection from threats often happened because of local people getting help from national figures or organizations. Douglas helped make this happen. His attention—in protests, on pages, from podiums—helped expand conservation's constituency, something critical at a time when nature represented a low political priority to most Americans.¹³

And so, as one who walked the hallways of national power and the ridges of high mountains with equal aplomb, Douglas served a powerful role not only in attracting attention but in

facilitating political connections. He articulated this strategy in *Ladies' Home Journal* in the summer of 1964, just months before the Wilderness Act overwhelmingly passed Congress. "We need Committees of Correspondence," he proclaimed,

to coordinate the efforts of diverse groups to keep America beautiful and to preserve the few wilderness alcoves we have left. We used such committees in the days of our Revolution, and through them helped bolster the efforts of people everywhere in the common cause. Our common cause today is to preserve our country's natural beauty and keep our wilderness areas sacrosanct. The threats are everywhere.... Local groups need national assistance; and that means joining hands in an overall effort to keep our land bright and shining.

Notably for Douglas, the struggle for wilderness was comparable to the historic revolutionary struggle. His call for new Committees of Correspondence to coordinate local activists, who knew wilderness threats best, and national organizations, who knew lobbying best, announced an important, effective, and common strategy. Only together could conservationists stop wanton destruction of the nation's natural heritage.¹⁴

Throughout his career and around the country, Douglas formed and functioned in these informal Committees of Correspondence. His letters housed in the Library of Congress, dating from the heart of his activism, reveal engagements and exchanges with Lyndon and, perhaps more importantly, Lady Bird Johnson, cabinet secretaries such as Douglas McKay (Interior) and Stewart Udall (Interior), and members of Congress such as Henry "Scoop" Jackson (D-WA) and Charles "Mac" Mathias (R-MD). And, of course, he forged connections with national conservationists along trails and rivers, with the leading figures in both the Sierra Club and the Wilderness Society, as well as local conservation groups.¹⁵

A brief story of his efforts in Oregon demonstrates both his connections and the cause and strategy for which he used them. Beginning in the late 1950s, the Forest Service planned a road and timber sale in the Minam River Canyon in Oregon's Wallowa Mountains. Over the next several years, Douglas shared pointed, strategic messages with Senators Wayne Morse (D-OR) and Richard Neuberger (D-OR), with national conservationists Brower and Zahniser, with local conservationists and residents, and with Secretary of Agriculture Orville Freeman and managers in the Washington, D.C., and Oregon offices of the Forest Service. In other words, he connected local and national activists with local and national leaders in the executive and legislative branches. And while doing so, he presented a consistent message: "With a road in there the wilderness will be ruined." Keeping roads out of wilderness had long focused activists, and so Douglas's point in his letters and a chapter in *My Wilderness* was not surprising.¹⁶

But more than the typical refrain about keeping roads out, Douglas called for public engagement. As he passionately put it, "Great issues of social security, power dams, reclamation, soil conservation, price controls, quotas for farmers, and the like are debated in Congress. Yet the issue of whether the people will be left a rich wilderness area or a dust bowl of stumps, serviced by roads, is left to the whim or caprice of a bureaucrat. If the Minam is to be ravished, if roads are to pierce this wilderness, the people should decide it after fair debate."

He wanted public hearings, for he was confident locals did not want the timber cutting on this part of the national forest. But at this time, no law or administrative procedure required such a hearing. “If it is to be protected,” Douglas continued, “changes in the basic law governing national forests must be made. These sanctuaries need the mantle of protection that only an Act of Congress can give them.”¹⁷

Here was the crux of Douglas’s conservation politics: for too long federal agencies acted without input from or accountability to the public whose resources they were charged with managing. Through his Committees of Correspondence, his letters to and lunches with political and environmental leaders, his speeches, and books such as his 1965 *A Wilderness Bill of Rights*, Douglas clamored for public access to decision-making. His voice resounded with authority, from the highest court in the land to the highest mountain meadows. And there were achievements, specifically and generally, for protected status. The Minam River eventually became a Wild and Scenic River running through the Eagle Cap Wilderness Area, while the Wilderness Act and the National Environmental Policy Act created avenues and requirements for public input on environmental matters. In this way, wilderness politics helped democratize protected lands management, a significant *political* achievement alongside the *conservation* accomplishments such legislation furnished.¹⁸

As Douglas raised attention and greased the political wheels for the Minam and countless other landscapes, he also consolidated and shared key ideas from various thinkers and traditions. In some ways, Douglas was at his best as a public intellectual, or, as others have called him, a “public philosopher” or “national teacher.”¹⁹ For instance, Douglas filled his first memoir, *Of Men and Mountains*, with more adventure (and campfire recipes) than lofty principles. But even so, he lauded the influence of mountains on people and nations: “A people who climb the ridges and sleep under the stars in high mountain meadows, who enter the forest and scale the peaks, who explore glaciers and walk ridges buried deep in snow—these people will give their country some of the indomitable spirit of the mountains.”²⁰ Such sentiments linked Douglas to a long line of American intellectuals and political figures, such as historian Frederick Jackson Turner and Theodore Roosevelt, who saw the nation’s vitality rooted in its abundant land—its wilderness frontier. To Douglas and others before and after him of all political stripes, the United States was “nature’s nation.”²¹

FOR PROTECTED LANDS, Douglas was a publicizer, a political broker, and a public intellectual. These worked together, bound up in a person of extraordinary ambition and intelligence.²² At the time he walked onto conservation’s stage, few were watching. The conservation movement transformed in Douglas’s lifetime, and the script (i.e., the rules) changed. Douglas did not, of course, *cause* all these changes. But he played crucial roles in effecting them. Several roles, actually; he was a bit of a shape-shifter for American conservation, becoming what the movement needed when and where it needed it. Here, he led a hike and gathered media attention. There, he wrote letters or shared a meal with members of Congress or the Cabinet to alert them to imminent harm to a river or forest. Now, he wrote a best-selling book celebrating natural, but endangered, places. Then, he issued a blistering opinion—dissenting most likely—charting an alternative to business as usual. Given the state of environmental protection

in 1939, an American dedicated to nature would have wanted someone who could articulate with eloquence nature's beauty and democracy's promise. She would have wanted someone who knew how government worked and how to nudge it along different pathways consistent with American principles. She would have wanted Bill Douglas on her side. I, for one, am glad he was there.

[*Ed. note:* This essay is adapted from remarks prepared for a seminar on the occasion of the 75th anniversary of the appointment of William O. Douglas to the United States Supreme Court, Washington, D.C., May 16, 2014.]

Endnotes

1. Studies of these conditions are widespread in environmental history and related fields. For some prominent examples, see Paul W. Hirt, *A Conspiracy of Optimism: Management of National Forests since World War Two* (Lincoln: University of Nebraska Press, 1994); Kevin Marsh, *Drawing Lines in the Forest: Creating Wilderness in the Pacific Northwest* (Seattle: University of Washington Press, 2007); Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York: Oxford University Press, 1985); Mark W.T. Harvey, *A Symbol of Wilderness: Echo Park and the American Conservation Movement* (1994; Seattle: University of Washington Press, 2000); Rachel Carson, *Silent Spring* (New York: Houghton Mifflin, 1962); Devra Davis, *When Smoke Ran Like Water: Tales of Environmental Deception and the Battle Against Pollution* (New York: Basic Books, 2002); Richard West Sellars, *Preserving Nature in the National Parks: A History* (New Haven: Yale University Press, 1997); Richard N.L. Andrews, *Managing the Environment, Managing Ourselves: A History of American Environmental Policy* (New Haven: Yale University Press, 1999).
2. I have made a similar argument in *The Environmental Justice: William O. Douglas and American Conservation* (Corvallis: Oregon State University Press, 2009); however, this essay reframes the argument somewhat and deploys unique examples and case studies.
3. For Douglas's early experiences, see Sowards, *The Environmental Justice*, chapter 1, and the following biographies: Bruce Allen Murphy, *Wild Bill: The Legend and Life of William O. Douglas* (New York: Random House, 2003); James F. Simon, *Independent Journey: The Life of William O. Douglas* (New York: Harper & Row, 1980); and memoirs: William O. Douglas, *Go East, Young Man: The Early Years—The Autobiography of William O. Douglas* (New York: Random House, 1974); William O. Douglas, *Of Men and Mountains* (1950; reprint, San Francisco: Chronicle Books, 1990), quotation on p. 35.
4. Sample publications by and about him in this era include, William O. Douglas, *Beyond the High Himalayas* (Garden City, NY: Doubleday, 1953), which earned him his first National Book Award nomination; William O. Douglas, *Russian Journey* (Garden City, NY: Doubleday, 1956); William O. Douglas, *West of the Indus* (Garden City, NY: Doubleday, 1958); Fred Rodell, "I'd Prefer Bill Douglas," *Nation* 174 (April 26, 1952), 400–402, urging Douglas to run for president; Politicus, "Justice Douglas—Headline Hunt-

er,” *American Mercury* 83 (August 1956), 121–126. His appearance on “What’s My Line” can be found at https://www.youtube.com/watch?v=0u_DgK-TIDA (accessed October 31, 2014). In the 1940s and 1950s, Douglas’s controversial statements often centered on questions of free speech and political liberty, which he extended even to communists in the midst of the Cold War—an unpopular stance. An excellent analysis of his positions is available in L.A. Powe, Jr., “Justice Douglas, the First Amendment, and the Protection of Rights,” in *“He Shall Not Pass This Way Again”: The Legacy of Justice William O. Douglas*, ed. Stephen L. Wasby (Pittsburgh: University of Pittsburgh Press, 1990), 69–90.

5. Two important books demonstrate the importance of the interwar era to the wilderness movement: Paul S. Sutter, *Driven Wild: How the Fight Against Automobiles Launched the Modern Wilderness Movement* (Seattle: University of Washington Press, 2002); Neil M. Maher, *Nature’s New Deal: The Civilian Conservation Corps and the Roots of the American Environmental Movement* (New York: Oxford University Press, 2008).
6. “Potomac Parkway,” *Washington Post*, January 3, 1954.
7. “Potomac Sanctuary,” *Washington Post*, January 19, 1954.
8. For greater detail of the C&O Canal campaigns, see Sowards, *Environmental Justice*, 34–48, 102–110. See also, Mark Harvey, *Wilderness Forever: Howard Zahniser and the Path to the Wilderness Act* (Seattle: University of Washington Press, 2005), 173–176. Stephen Fox called Douglas “the most prominent conservationist in public life” in the postwar era in *The American Conservation Movement: John Muir and His Legacy* (Madison: University of Wisconsin Press, 1981), 239.
9. In 1958, Douglas led a similar hike to protest a proposed road in Olympic National Park along the Pacific coast; see Sowards, *Environmental Justice*, 48–56.
10. William O. Douglas, *My Wilderness: The Pacific West* (Garden City, NY: Doubleday, 1960): 79 (Baboquivari), 262 (Allagash), 53–54 (Wind River Mountains), 51 (Murie quotation); William O. Douglas, *My Wilderness: East to Katahdin* (Garden City, NY: Doubleday, 1961), 65–74 (Hart Mountain).
11. Douglas, *My Wilderness: Pacific*, 9–31 (Muries), 185 (Brower); Douglas, *My Wilderness: East*, 156–180 (Broome), 99–125 (Olson). For Douglas in Texas, see William O. Douglas, *Farewell to Texas: A Vanishing Wilderness* (New York: McGraw-Hill, 1967); for Bowmer and Burleson’s invitation, see Simon, *Independent Journey*, 327. Also, Margaret E. Murie, *Two in the Far North* (1957; reprint, Anchorage: Alaska Northwest Books, 1997), 333–339. Correspondence between David Brower and Douglas describe arrangements for a High Sierra hike in September 1959 that Douglas used for a chapter in *My Wilderness*. See David Ross Brower Papers, Bancroft Library, University of California–Berkeley.
12. Maribeth Morris, “Protestors Crash Douglas Camp-In,” *Seattle Post-Intelligencer*, August 6, 1967; Marjorie Jones, “Douglas Leads Glacier Peak Protest,” *Seattle Times*, August 6, 1967. John McPhee, *Encounters with the Archdruid* (New York: Farrar, Straus and Giroux, 1971), 3–75.

13. On reclassification, see Harvey, *Wilderness Forever*, 152–169; Marsh, *Drawing Lines in the Forest*.
14. William O. Douglas, “America’s Vanishing Wilderness,” *Ladies’ Home Journal* 81 (July 1964), 77.
15. The finding aid of his papers is found at Library of Congress, “William O. Douglas Papers, 1801–1980,” accessed November 3, 2014, <http://hdl.loc.gov/loc.mss/eadmss.ms002011>. See Sowards, *Environmental Justice*, especially chapter 4 for his interactions with these correspondents.
16. Sutter, *Driven Wild*; Douglas *My Wilderness: Pacific*, 193–206. Quotation from William O. Douglas to Richard L. Neuberger, July 30, 1959, in William O. Douglas Papers, Correspondence, Box 360, Richard Neuberger (1947–1973), Library of Congress, Washington, D.C. The other correspondence is too numerous to list.
17. Douglas, *My Wilderness: Pacific*, 201.
18. William O. Douglas, *A Wilderness Bill of Rights* (Boston: Little, Brown and Company, 1965); current details on the Eagle Cap Wilderness and wild and scenic river status for the Minam River can be found on the national forest’s website, US Department of Agriculture, Forest Service, “Wallowa-Whitman National Forest,” accessed November 4, 2014, <http://fs.usda.gov/wallowa-whitman>. The democratic elements of wilderness politics is a major theme in Marsh, *Drawing Lines in the Forest*; and James Morton Turner, *The Promise of Wilderness: American Environmental Politics since 1964* (Seattle: University of Washington Press, 2013).
19. “Public intellectual” is my term in Sowards, *Environmental Justice*, introduction; “public philosopher” is Charles Reich’s term, quoted in Stephen L. Wasby, “Introduction,” in *He Shall Note Pass This Way Again*, xvi; “national teacher” is James F. Simon’s term in *Independent Journey*, chapter 25.
20. Douglas, *Men and Mountains*, 328.
21. Perry Miller coined the phrase in *Nature’s Nation* (Cambridge: Belknap Press of Harvard University Press, 1967), although the connection between nature and American character permeated thinkers in the late 19th century, exemplified by Roosevelt and Turner, and nicely explored in Richard White, “Frederick Jackson Turner and Buffalo Bill,” in *The Frontier in American Culture*, ed. James R. Grossman (Berkeley: University of California Press, 1994), 6–65.
22. On the occasion of Douglas’s death, his colleague Justice William Brennan, no intellectual slouch, remarked that Douglas was “the only true genius that I have ever known.” “Justice Douglas: ‘A Genius,’” *Chicago Tribune*, January 26, 1980.

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