



Author M. Margaret McKeown (University of Nebraska Press)

Local judge M. Margaret McKeown examines the environmental legacy of Supreme Court justice William O. Douglas in 'Citizen Justice'

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When it comes to the U.S. Supreme Court, we'd all like to believe that we're dealing with impartial, objective justices. The types of people who won't bring their personal politics or beliefs into their deliberations or rulings. Many of us hark back to an idealized time where the Supreme Court was more centrist, above the partisan frays of the legislative and executive branches.

The truth is, however, that personalities have always been part of the court and however much we'd like to think we're living in the worst of times when it comes to partisanship, a quick look into U.S. history might prove otherwise.

Take Justice William O. Douglas, arguably one of the most opinionated justices to ever serve on the bench. He also happens to have the distinction of having served the longest tenure on the court — 36 years, from 1939 to 1975 — and was once considered to be an ideal candidate for vice president. There have been many biographies written about Douglas over the years, and he left behind myriad writings, papers and a multi-volume autobiography. But for local Judge M. Margaret McKeown, she always felt that some of the most compelling aspects of Justice Douglas were the ones that were both unexplored and controversial in their time.

“I think what surprised me the most that is that you had this justice going full speed on the Supreme Court and, at the same time, in my view, I learned he was essentially running this one-man lobby shop,” says McKeown, herself a judge for the 9th Circuit Court of Appeals and who was once considered for a Supreme Court appointment by President Barack Obama.

“He was advocating for the environment, and he turned out to be so critical to the history of conservation and to the saving of several physical places. So this combination had not really been focused on in prior books.”

Defender of nature

McKeown's fascination with Douglas' ardent conservationism led her to write "Citizen Justice: The Environmental Legacy of William O. Douglas," a compelling biography that tracks Douglas' beginnings as a humble outdoorsman to becoming a strident defender of nature.

McKeown acknowledges that there are, perhaps, more historically relevant or even salacious details about Douglas' life that readers might find more intriguing (his opposition to the war in Vietnam, his support of civil rights, his multiple impeachment investigations, his womanizing and multiple marriages, etc.), but she says she couldn't help but feel as if Douglas could be, perhaps, an unacknowledged forefather of the modern environmental movement.

"He had a real point of view on all of that and a couple things that he really believed, and one of those beliefs was that you needed to protect wilderness and you see that in his decisions," McKeown says. "But then he also said the constitution was to keep the government off the backs of the little people and you see that in his decisions, not just his environmental decisions, but a lot of his other decisions."

In fact, McKeown came to see Douglas' evolution as one that started in conservationism and slowly transitioned into to a more strident form of preservationism. That is, he came to believe later in life that nature should be protected at all costs and that, despite what may good for humanity (say, for example, a hydroelectric dam), nature has the same fundamental rights under the Constitution as "We the People." This is evident in his dissent in the 1972 *Sierra Club v. Morton* case, a 4-3 decision in which Douglas ostensibly agreed with the Sierra Club that organizations should be able to sue on behalf of inanimate objects, such as trees.

"The query whether 'trees have standing' continues to bring both amusement and recognition," McKeown writes in "Citizen Justice." "Douglas did not rewrite the law or move the earth, but in a single dissent, he articulated an enduring principle: nature

deserves its day in court ... [he] brought home the importance of opening the courts to environmental disputes and arguably transformed the way environmental organizations see their mission — as standing for the trees.”

The fact that McKeown’s book is being released on the 50th anniversary of the *Sierra Club v. Morton* decision is not lost on her, however coincidental. She doesn’t hesitate to affirm that, of the hundreds of cases Douglas ruled on, *Sierra Club v. Morton* is the one that fascinates her and many other legal scholars and judges the most.

“That has got to be the favorite case,” McKeown says, careful to point out that many thought Douglas should abstain from hearing the case since he himself was a member of some conservation and environmental organizations. “I was really interested in the ethical aspects of how he had this close association with the Sierra Club and then tried to resign it and then sit on the case. I was very interested in how he quite fairly brought to bear his personal understanding of wilderness and nature.”

McKeown goes on to call Douglas’ written dissent as one of the most “poetic” and influential dissents in Supreme Court history.

“A lot of Douglas’ experience you see in that opinion,” McKeown says. “So it’s not like all of a sudden a light went off and he saw this. It’s really a culmination of literature, ecology and legal analysis. That’s really what many consider to be one of the most famous dissents in the U.S. Supreme Court of all time famous dissents. It shows you the value of dissent because it raised the issue.”

Judge and advocate

For McKeown, the proverbial light went off for her around six years ago while visiting Grand Teton National Park in her native Wyoming. While snowshoeing through the park, she stumbled upon the Murie Ranch, a homestead that once belonged to the couple that led The Wilderness Society. She ended up researching the couple and found

that they often corresponded with Justice Douglas on matters of conservation. This subsequently led her to ponder what, in fact, Douglas' environmentalist legacy might be if, in fact, he was "mixing his roles as a justice and an advocate."

"I was trying to really understand the story and, of course, the story changed when I did more research," McKeown says. "At first, I thought it might be more about the Muries, who were very interesting, but then I realized that, really, Douglas was the driver of the story."

Ultimately, McKeown thinks her book could appeal to anyone with an interest in the U.S. Supreme Court, the law, and the history of environmentalism. But most of all, she sees it as a portrait of a unique advocate who, while having plenty of faults and contradictions, may have been ahead of his time.

"I'd like everyone to read the book. It may not be everyone's cup of tea, but it is not written for a lawyer," McKeown says. "Ethics play an important part in the judiciary. It's part of the American respect for the judiciary, and it's part of our judicial independence. So I think that it raises questions for us to think about on how did these worlds merge."

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