

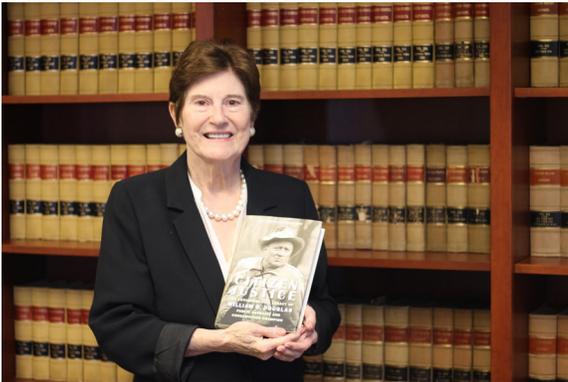
Passion for outdoors led circuit judge to write about Justice William O. Douglas' environmental advocacy

Judges and Judiciary

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Mar. 16, 2023

Judge M. Margaret McKeown spent five years in research institutions across the country to write “Citizen Justice: The Environmental Legacy of William O. Douglas — Public Advocate and Conservation Champion”.



Sunidhi Sridhar / Daily Journal photo

Circuit Judge M. Margaret McKeown’s passion for the great outdoors began as a young girl growing up around the nature and wilderness of Wyoming. She often hikes the mountains in Grand Teton National Park, and it was during a snowshoeing trip in the area that the idea for her first book sprung to mind.

“I didn’t know exactly where I was and this guy came out and he said, ‘You’re at the Murie Ranch,’” explained McKeown, who serves on the 9th U.S. Circuit Court of Appeals in San Diego, “and I said, ‘Oh, yeah, I know. John Muir.’”

Once the judge was told that she was actually on a homestead that once belonged to Olaus and Mardy Murie, conservationists and close friends of former U.S. Supreme Court Justice William O. Douglas, McKeown soon learned that Douglas and the Muries shared an affinity for preserving the environment and the nation’s natural resources.

Published by McKeown last September, “Citizen Justice: The Environmental Legacy of William O. Douglas — Public Advocate and Conservation Champion” focuses on the environmental legacy of Douglas, considered to be one of the most progressive and somewhat controversial justices to sit on the court.

“I didn’t want to write a faux biography as there are several biographies of him,” said McKeown. In the midst of her research, the judge said she realized that the compelling story about Douglas was his environmental activism while sitting on the Supreme Court. “It was like he was leading two parallel lives,” McKeown noted about the longest-serving justice in Supreme Court history.

McKeown’s research took almost five years and led her across the country from one library to another. The judge read a lot of the original correspondence Douglas wrote and received because, in McKeown’s own words, he was a “pack rat.”

With 11 chapters constructed from firsthand sources and documents, as well as interviews with former law clerks, “Citizen Justice” delves into Douglas’ journey on the Supreme Court through the lens of important environmental cases brought before him and his fellow justices. Having spent his adolescence near the mountains of central Washington, Douglas’ love and respect for nature and the outdoors was no secret and he frequently took hard stances against infrastructure taking over the earth.

One of Douglas’ most recalled moments of environmental activism was his 1954 trek with editors from the Washington Post along Maryland’s Chesapeake & Ohio Canal to protest a proposed highway in the area, as McKeown’s book recounted. The National Park Service considered building some roads by the canal as an alternative to other suggested recreational uses and the Washington Post came out in support of this idea.

“I wish the man who wrote your editorial ... approving the parkway would take time off and come with me. We would go with packs on our backs and walk the 185 miles to Cumberland,” Douglas challenged in a letter. “I feel that if your editor did, he would return a new man and use the power of your great editorial page to keep this sanctuary untouched.” Douglas’ efforts were a success and no highway was built, and the canal is now known as the C & O Canal National Historic Park.

Douglas’ protest hike was just one instance of the Supreme Court justice leveraging his position and influence to achieve a goal, and as he envisioned himself in the Oval Office one day, Douglas’ extrajudicial activities were at times met with consternation about potential conflicts of interest.

“A number of justices over the years had expressed interest in presidential politics but he not only had that interest, but he was also very affirmatively out there as a potential candidate,” said McKeown, the former chair of Judicial Conference of the U.S. Codes of Conduct Committee, which is the national ethics committee for federal judges. “I felt that I could bring a different lens to his activities by also looking at the ethical conundrums he was facing,” McKeown continued.

Douglas always defended his prerogative to exercise his rights as a citizen despite holding public office, maintaining that there was no wrongdoing as long as he did not let his activities interfere with the work of the court. The code of ethics for Supreme Court justices these days is more stringent, but McKeown said Douglas felt it was important to lend his voice and champion causes important to him, including environmental conservation.

In 1972, for instance, the Sierra Club sued U.S. Secretary of the Interior Rogers C.B. Morton over the Walt Disney Company’s plan to construct a \$35 million ski resort in the Sequoia National Forest. The case

reached the Supreme Court after an appellate court found that the Sierra Club did not have standing because it made no allegations that it would be personally affected by the ski resort.

The Supreme Court affirmed the lower court's ruling 4-3, maintaining that the Sierra Club did not meet the requirements to be the plaintiff in this case. But Douglas' dissent in *Sierra Club v. Morton* posed one of the most recognizable questions in U.S. jurisprudence: "Should trees have standing?"

"Douglas was there in a nascent, burgeoning time of this conservation movement and he was so passionate that he became a bandleader for conservationists," McKeown reflected. While the U.S. has not completely embraced the concept of giving legal standing to inanimate objects, McKeown said she thinks Douglas opened up the conversation as to how environmental issues in this country will get their day in court.

Douglas was writing for the future, said McKeown, and sometimes the future takes a long time to come to pass. One piece of advice Douglas gave his law clerks resonated with her, she added. "'Get into the stream of history and swim as fast as you can.' I think it's a nice metaphor for what he did but also for lawyers to think about the impact they might have during their careers," McKeown said.

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