

A TRIBUTE TO JUSTICE DOUGLAS

By ARTHUR J. GOLDBERG*

As a friend of long standing and a former colleague of Justice Douglas, I am saddened at his retirement from the Supreme Court of the United States.

Justice Douglas served on the Court for thirty-seven years—a record of tenure unsurpassed in the history of our nation's highest tribunal. It is to be hoped that, free of the great burdens of the Court, Justice Douglas will regain his former health and vigor.

William O. Douglas is a jurist of extraordinary talent, outstanding capacity and total dedication both to the Court and to the country. His retirement under the given circumstances is testimonial to this dedication.

Every justice of the Supreme Court is cast in his own mold. But there are, nevertheless, some similarities in judicial outlook among justices past and present.

In the case of Justice Douglas, I am reminded of an attitude of Justice Story, who sat on the original Court. In 1832, the case of *Worcester v. Georgia* came to the Court. In that case, the Supreme Court upheld the claim of the Cherokee Indians to treaty land against annexation by the state of Georgia. This ruling aroused great anger on the parts of President Jackson and Georgia. There were rumors and even threats that both the president and Georgia would decline to follow the Court's decision. Referring to these reports, Justice Story, in a letter to a friend, said this:

Georgia is full of anger and violence. What she will do, it is difficult to say. Probably she will resist the execution of our judgment, and if she does, I do not believe the President will interfere. . . . The rumor is, that he has told the Georgians he will do nothing. I, for one, feel quite easy on this subject, be the event what it may. The Court has done its duty. Let the Nation now do theirs.

It is characteristic of Justice Douglas, as it was of Justice Story, that he consistently has adhered to the view that, regardless of the controversial nature of a case or controversy properly before the Court, the Supreme Court must do its duty and the nation theirs.

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In reviewing Justice Douglas' judicial philosophy, I am reminded of a felicitous and perceptive observation by Justice Cardozo: "The inn that shelters for the night is not the journey's end. The law, like the traveler, must be ready for tomorrow." Recognition of this truth has been an earmark of Justice Douglas' long career on the bench.

And William O. Douglas, like Chief Justice Marshall, has "never [sought] to enlarge the judicial power beyond its proper bounds, nor [feared] to carry it to the fullest extent that duty requires."

Our posterity will evaluate his great contribution as a justice of the Supreme Court. I need not await the verdict of history to state my appraisal.

William O. Douglas is one of the truly great justices of the Supreme Court. And he is a truly great American, believing with Chief Justice John Jay in the free air of American life. I share the justice's hope and conviction that as long as the Court sits, it will remain free.