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"Justice Douglas Went East, But Appointed to Court as a
Westerner"

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President Franklin D. Roosevelt wanted to nominate William O. Douglas to the U.S. Supreme Court to fill the vacancy left by the retirement of Justice Louis Brandeis in 1939, but there was a problem, a geographical problem.

Douglas, a resident of Connecticut since his days as a Yale Law Professor, and four current Justices—Hughes, Stone, Frankfurter and Roberts—were Easterners. While no formal requirement for geographical representation on the Court existed, presidents had generally followed a long, if somewhat loose, tradition that suggested geographical balance in the Court's membership. The nomination of Douglas to the Court seemed untenable and would generate political headaches for the Roosevelt Administration.

Pressure was building for the appointment of someone West of the Mississippi. President Roosevelt was being pushed to nominate Senator Lewis Schwollenbach, but opposition from the other Senator from the State of Washington undercut that effort. At that juncture, fellow New Dealers Jerome Frank and Thomas Corcoran reminded Roosevelt of Douglas's deep roots in Washington and suggested that his nomination to the Court might be framed through the prism of Western geography. The geographical factor proved persuasive to Roosevelt, who needed only a slender reed on which to rest Douglas's nomination. Roosevelt had long been hoping for the chance to place Douglas on the

Court. The two had developed a kinship grounded on political ideology, aspirations for America, personal and political ambition, poker and, in an important way, a shared history of dealing with polio.

As Douglas's chances of joining the Court were rising, some questioned his loyalty to the New Deal. In response, Douglas delivered a fiery speech in which he condemned the financial community and, drawing upon the reforms that he had engineered as Chairman of the Securities and Exchange Commission as well as his promotion of changes in the nation's laws governing bankruptcy and debtor-creditor relations, confirmed his reformist character and his commitment to the New Deal. The speech proved to be a resounding success. A week later, Roosevelt nominated Douglas to the High Court, and on April 4, 1939, he was confirmed by the Senate on a 62-4 vote.

The Court that Justice Douglas joined was philosophically supportive of the New Deal and its emphasis on labor laws and government regulation of business. Douglas earned his reputation, at least initially, for his opinions that sustained regulations of the business community. Some of his opinions remain largely undisturbed, particularly those that established standards reviewing agency ratemaking and those that held a combination to fix prices was illegal per se, that is, without further inquiry into their reasonableness.

Many Americans will recall Justice Douglas's contributions to the defense and expansion of civil rights, including freedom of speech, freedom of the press and the right to privacy. His most famous civil liberties opinion was *Griswold v. Connecticut* (1965), in which he identified a constitutional right to privacy, which emanated from the "penumbras" of rights enshrined in the First, Third, Fourth, Fifth and Ninth Amendments. His theory reflected an intellectual

indebtedness to Justice William Brennan, but Douglas was the Justice remembered for the theory, and he was roundly criticized by many scholars at the time for the introduction of a "right" that seemed to emerge from the shadows and lacked substance. In time, however, many of his critics came to embrace the right to privacy and shared his expectation that it is central to freedom in a democracy.

Some citizens will recall the efforts in April 1970 of House Minority Leader Gerald R. Ford, at the behest of President Richard Nixon, to bring articles of impeachment against Justice Douglas, just the second time in U.S. history that a Supreme Court Justice was the subject of impeachment. The first involved Justice Samuel Chase in 1804. Chase was impeached by the House of Representatives but acquitted in the Senate trial.

President Nixon orchestrated the impeachment attacks against Douglas in retaliation for the Senate's defeat of two of his Supreme Court nominees, Harold Carswell and Clement Haynsworth. Nixon had characterized Douglas as "the darling of the liberals" and sought his removal from the bench. Minority Leader Ford brought the articles of impeachment, citing Douglas's activities off the bench that involved, essentially, a \$300 payment for a magazine article that he wrote and an excerpt of his book, "Points of Rebellion," published in another magazine. As it developed, Douglas's publisher approved publication of the excerpt without Douglas's knowledge.

A subcommittee of the of the House Judiciary Committee was charged with task of investigating Douglas's activities. After eight months, the committee announced it had no evidence that Douglas had committed an impeachable offense. The Nixon-Ford attempt to remove Justice Douglas from the Court had proved futile.

Justice Douglas served on the Court longer than any other justice in American history. On December 31, 1974, Douglas suffered a debilitating stroke. He was partially paralyzed and never recovered his full capacities. He was absent from the Court for the rest of the Supreme Court Term. He tried to return the following fall but didn't have much strength. On November 12, 1975, he submitted his resignation letter to President Gerald R. Ford.

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