



## Here he lies: Justice Douglas' Arlington grave

By Geoffrey Watson SC

William Orville Douglas was an associate justice of the United States Supreme Court from 1939 until he reluctantly retired in 1975 – a period of 36 years, the longest service by a judge on that court. He remains admired, almost venerated, in liberal circles. A man of great natural intellectual ability with vast reserves of restless energy, Douglas betrayed those gifts with his arrogance, hubris, ambition and simple-minded prejudices. An uncontrolled sex-drive seriously complicated things. An egomaniac, he had scant regard for the constraints of precedent – he boasted ‘I’m not bound by precedents – I make precedents’. After 36 years on the Supreme Court Douglas managed to leave no positive mark

on American jurisprudence.

The odd thing is that Douglas seems generally well-remembered – well, he is

well-remembered by those people who did not actually know him. The American jurist and legal theorist, Judge Richard Posner, actually knew Douglas – and this is what Posner says:

Apart from being a flagrant liar, Douglas was a compulsive womanizer, a heavy drinker, a terrible husband to each of his four wives, a terrible father to his two children, and a bored, distracted, uncollegial, irresponsible, and at times unethical Supreme Court Justice who regularly left the court for his summer vacation weeks before the term ended. Rude, ice-cold, hot-tempered, ungrateful, foul-mouthed, self-absorbed, and devoured by ambition, he was also financially reckless – at once a big spender, a tightwad, and a sponge – who, while he was serving as a Justice, received a substantial salary from a foundation established and controlled by a shady Las Vegas businessman.

Not much fence-sitting there.

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Douglas' story is complex and long – and much too long for here. So I want to focus on the first point that was made by Posner – his statement of fact that Douglas was 'a flagrant liar'. In particular I wish to tell the story about Douglas' grave. Douglas died in 1980 and was buried in Arlington National Cemetery in that part of the grounds reserved for US Supreme Court Justices who had seen military service. One side of his sombre grey granite headstone bears the words 'Associate Justice, United States Supreme Court', the other side is far more humble – it bears his name and these words 'Private, United States Army'.

### Who was Bill Douglas?

Usually at this point I would give you a potted history of Douglas' life, but an accurate biography is nearly impossible because

the truth has become so obscured by Douglas' deliberately false accounts of his life.

We do know a few things for sure. Douglas was born in 1898 and raised in Yakima – a remote rural area in Washington state. He attended Whitman College in Walla Walla, Washington. He was accepted into Columbia Law School. He graduated fifth in his class (although he later claimed he ran second). He worked briefly in a 'white shoe' firm, but left for academia and taught at each of Columbia and Yale. He became chief at the Securities Exchange Commission in those heady days following the Wall Street crash. He had strong and influential connections in the Democratic Party and was appointed by Franklin Delano Roosevelt to the Supreme Court in 1939. Douglas was one of the crucial appointments made by Roosevelt as part of his relentless drive to liberalise the court in the days of the New Deal.

Early on I described Douglas as an egomaniac. This is a man who pictured himself in the Oval Office. Almost as soon as he was appointed to the Supreme Court, Douglas became bored and began exploring political options. In 1944 the only candidates seriously considered for the vice president were Douglas and Harry Truman. The selection of a vice-president at that time was especially important because it was already obvious that Roosevelt was ailing – the vice-president was very likely soon to become president. Douglas was bitter about losing that race to Truman. Another shot at power failed in 1960 – Lyndon Johnson had promised to make Douglas his vice-president in the event that he won the Democratic Party nomination.

Maybe this is why Douglas began to tell so many lies about his own life. His own life seemed, at least to him, to be a disappointment – could it be reconstructed and improved? Perhaps this is why he was always marrying younger and younger wives (he married his fourth wife when he was 68 – she was a 22 year old cocktail waitress). It seems that he was constantly attempting to reinvent himself.

### The creation of a new, more exciting Bill Douglas

One of Posner's points was that Douglas often found himself short of cash. In 1948 Douglas was in real financial distress, and he hit upon an idea for self-funding – he would write an autobiography. By the end of his life he had written no less than three autobiographies. These autobiographies contained a new and much more interesting version of Bill Douglas' life.

But his first shot was a total failure. In 1948 he presented his manuscript to a publisher – modestly titled *Of Men and Mountains*. After careful consideration the publisher rejected the book – upon the grounds that it was just

too boring.

Well, there is one obvious way of improving the interest level of the story – just make stuff up. As Douglas rewrote *Of Men and Mountains* his life began to improve markedly in the retelling. For example, according to his fictionalised version, Douglas descended from a Civil War hero (untrue; his grandfather was a deserter). He said he was raised in poverty (untrue) and his early education was held back because of this (equally untrue). Slogging away against this (invented) injustice, Douglas told how he went on to be accepted by Columbia (that part is true), but he said he was so short of money that he arrived in New York in 1922 with six cents in his pocket (not true). He even said he could only get to the University by smuggling himself onboard a cattle car and 'riding the rods' like a hobo (untrue; he was a fully paid passenger). His autobiography recounted how he struggled financially at Columbia (untrue; he lived comparatively well, supported by his first wife who was a teacher).

And it was in *Of Men and Mountains* that Douglas first introduced the American public to the story his greatest fight – and his greatest triumph – his childhood battle with polio. Douglas told how he was destroyed by

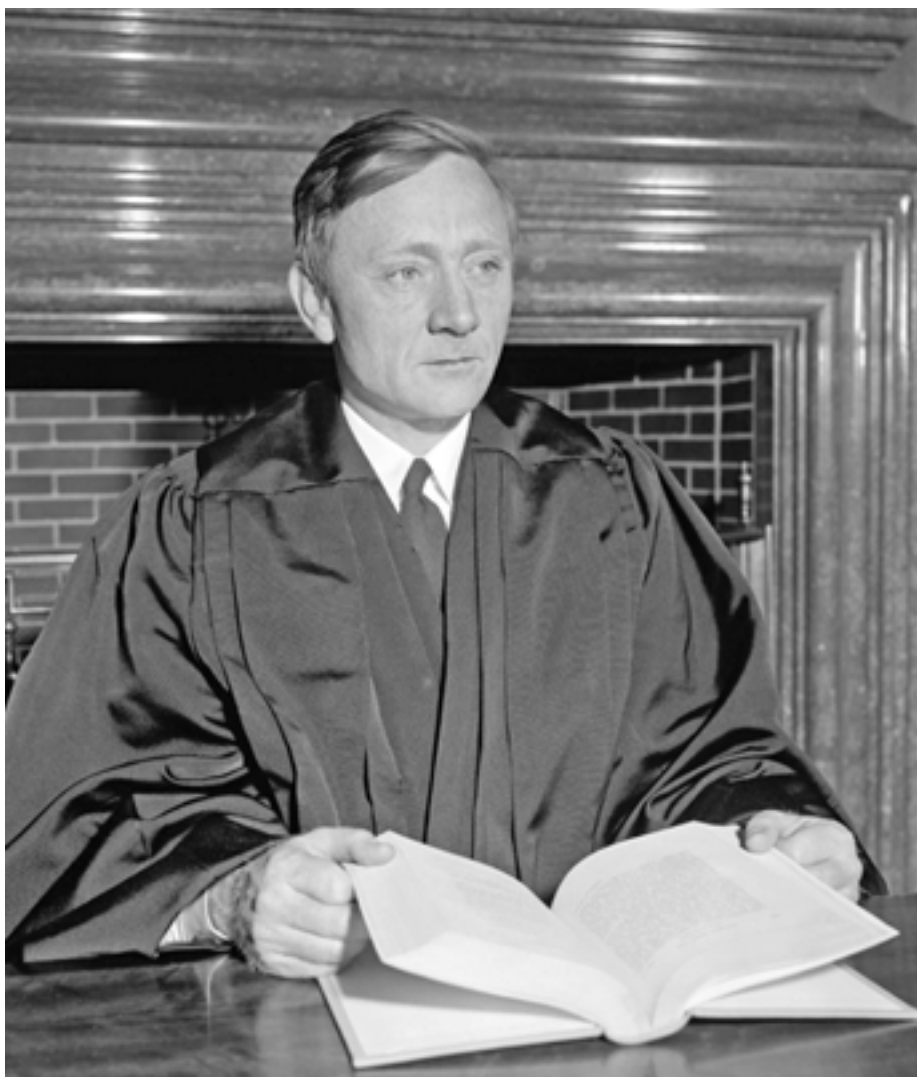
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that evil disease, but how he conquered his disability and taught himself to walk again, and how he built up his 'pipestem legs' climbing the mountains near his childhood home. The public loved this – and, to be honest, it really is inspiring stuff. Bear in mind this was only three years after the death of Roosevelt. Douglas must have seen the vacancy and stepped into the job of America's most beloved polio victim. This story propelled Douglas into the public heart – he became an American hero.

The disgraceful fact is that the polio story was untrue; Douglas simply made it up. No-one (until recently) checked the facts.

Strangely enough, the fact that Douglas' never had polio made his bravery more admirable. His adoring public noted how Douglas never mentioned his polio in the numerous interviews he had given over decades of public life, and perversely Douglas received





William Orville Douglas, 40 year old successor to retired Justice Louis D. Brandeis, before he was sworn in on April 17, 1939. Photo: Everett Collection Historical / Alamy Stock Photo

greater kudos because he had kept quiet about his disability and had never traded on the sympathy factor. What a guy.

The new, improved *Of Men and Mountains* became a nationwide best seller, netting its author the then substantial sum of \$32,900.

I could go on with more detail about the remarkable misrepresentations made by Douglas over many years – there is not space here to do that. I will put all of that aside and now focus on a standout misrepresentation made by Douglas, and which led to his burial in Arlington.

### Douglas' burial in Arlington

Arlington National Cemetery has a sacred place in the American psyche. Only veterans who saw active duty are permitted to be buried in Arlington. Arlington is in Virginia, just a few miles south of Washington DC. The portion set aside for the former US Supreme Court judges is an especially lovely part of the park, high on the hill and close to the old house, with panoramic views over the Potomac and back up toward the Capitol.

In his private papers Douglas made it clear

that he wished to be buried in Arlington, an entitlement he claimed derived from his service as a private in the First World War. Douglas had taken many opportunities to recount his war experiences, and he had referred to them in some of his autobiographies. A personal anecdote regarding his war service even figured in one of Douglas' Supreme Court judgments. In *Secretary of Navy v Avrech* 418 US 676 (1974) a marine was court-martialled for criticising the Vietnam War. The soldier challenged the charges, alleging they infringed his right to 'free speech'. The majority declined to deal with the argument on jurisdictional grounds. Douglas dissented, and in doing so drew directly upon his own experience as a soldier (at 680):

Soldiers, lounging around, speak carefully of officers who are within earshot. But in World War I we were free to lambast General 'Black Jack' Pershing, who was distant, remote and mythical. We also grouched about the bankers' war, the munition makers' war in which we had volunteered. What we

said would have offended our military superiors. But ... we saw no reason we could not talk about it among ourselves.

One can almost picture young Douglas taking cover in those muddy trenches in France, artillery fire bursting overhead.

But it wasn't true: Douglas had invented his military service.

The truth is that while at Whitman College Douglas had joined the Student Army Training Corps – the SATC is an American equivalent to what we would call the cadets. Douglas only joined the SATC on 1 October 1918. In the 41 days between joining the SATC and Armistice Douglas remained a full-time college student. He was never

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issued with a weapon. His SATC uniform only arrived after the war was over. Little wonder Black Jack Pershing was regarded as 'distant'.

When Douglas died his wife asked for him to be interred in Arlington. Arlington's mandatory check of military records showed there were no records of Douglas' service. It was simply assumed that his records must have gone astray. After all, this man was a US Supreme Court justice – he could be trusted. The authorities accepted the claim and Douglas was buried with full military honours.

So there he was buried – Douglas lies in Arlington in two senses.

And a postscript: The typical reason a college student joined the SATC was that it was a means of avoiding conscription. Douglas, the self-perceived military hero, was, in all probability, a shirker.

### Further reading:

Bruce Murphy, *'Wild Bill: The Legend and Life of William O Douglas'*, 2003 – the most enjoyable judicial biography I have ever read, written by one of America's finest judicial biographers.