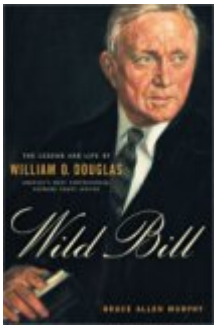
H-Net Reviews
in the Humanities & Social Sciences

Bruce Allen Murphy. *Wild Bill: The Legend and Life of William O. Douglas.* New York: Random House, 2003. xvii + 716 pp. $35.00 (cloth), ISBN 978-0-394-57628-2.



Reviewed by Melvin I. Urofsky (Virginia Commonwealth University)
Published on H-Law (June, 2003)

A Portrait of Douglas–One Half Missing

A Portrait of Douglas–One Half Missing

Several years ago at a symposium on judicial biography, Judge Richard Posner declared, in effect, that the genre did not exist. How a judge lived his or her life really didn't matter as far as the law went, and in terms of the law, the bottom line was the opinion. The judge could be a saint or a sinner, a hero or a villain, a Democrat or a Republican. So whether the author of the opinion was a John Marshall or a Harold Burton, in the end all one needed to know was contained in the pages of U.S. Reports.[1]

Although I disagreed with Judge Posner,[2] reading Bruce Murphy's biography of William O. Douglas gives me second thoughts. Murphy tells us all sorts of things about Douglas the man, but his efforts to tie that life to the corpus of work Douglas did on the Court is extremely disappointing. While we have what may be an accurate picture of "Wild Bill"–womanizer, cheat, and all-around son-of-a-bitch–at the end of the text we know very little about Mr. Justice Douglas. Perhaps Posner is right, but I suspect that had we a better analysis of the Court's work and Douglas's opinions during the more than thirty-sex years he sat on the bench, we would have a better understanding of the man *and* the judge.

Let's take Douglas the man first. Although he published three volumes of autobiographical writings, including the best-selling *Go East, Young Man* (1974), scholars have known for a long time that the books are full of inaccuracies, or–if one wants to be harsh–down-right lies. Autobiography is always in large measure an *apologia pro vita sua*, but some people enlighten us by taking an honest and thoughtful look at the lives they led, the people they loved, the mistakes they made. Douglas never claimed that *Go East* was in the same category as *The Education of Henry Adams*, but one might have expected a bit more introspection. As Murphy makes clear, however, introspection was not one of Douglas's strong points. Moreover, Douglas considered his life a failure in some ways, because he had never achieved the one thing that, according to Murphy, he wanted more than anything else–the presidency of the United States.

>From the time he went onto the Court in 1939, until the nomination of Jack Kennedy for president in 1960, Douglas nursed this dream. He came within an inch of securing it when Franklin Roosevelt gave the party bosses two names for his running mate in 1944, Douglas and Harry Truman, and Bob Hannigan did not let anyone know that FDR had put Douglas's name first. Truman asked Douglas to be his running mate in 1948, but Douglas thought Truman would lose, and did not want to gamble the financial security of the Court to be on what he–and, indeed many others–thought would be a losing ticket. As late as 1960 he offered to leave the Court to campaign for Lyndon Johnson, in the belief that if Johnson captured the Democratic nomination Douglas would be his running mate and possibly his successor.

All through this period, of course, Douglas protested loudly and strongly to anyone who would listen that he had not the slightest interest in the presidency, even while he used surrogates to try to capture the prize. Fe-

lix Frankfurter's rantings about Douglas's political ambitions while on the Court were not that far off the mark; the only problem was that it came from a pot calling the kettle black. In his first book, Murphy detailed how involved Frankfurter himself was in the political process, although his birth in Vienna precluded him, under the Constitution, from ever hoping for the presidency.[3]

I think Murphy is probably right in his characterization of Douglas's political ambitions, but they are hardly new. What we have here is a far more detailed and documented case than we have had before, and Murphy uses this material to buttress his theme that Douglas's life, at least from the late 1930s until 1960, was dominated by this obsession. We should be grateful, however, that Murphy does not engage in the type of psychobabble that Douglas's life would have elicited from some writers. He notes that Douglas's mother told him he would be president, and in a way made that his life's goal; he could never meet her expectation–nor his–and thus despite other achievements could never be satisfied.

We also know that Douglas was a womanizer, married four times, the only member of the Court to divorce, not once but three times, and that until a stroke incapacitated him at the end of 1974, he chased–and often caught–anything in a skirt that appealed to him. He had friends both in the nation's capitol and in Yakima, Washington, who kept an eye out for young attractive women, and according to Murphy, most of them were more than willing to go to bed with a man two or three times their age. He carried on these affairs during his marriage, and when his fourth wife, Cathy, left Goose Prairie to return to law school, Douglas promptly had an old girl friend installed in her place until he, too, returned to Washington. Here, the theme is not new, and James Simon reported it in his earlier biography of Douglas;[4] Murphy just piles on the details. All of this was also common knowledge during his life, but that was a time when reporters, even when they knew about the marital infidelities of public officials, kept them quiet. Now, post Gary Hart and Bill Clinton, it is unlikely that Douglas would have been able to stay on the Court; a Republican majority dominated by social conservatives would have considered his philandering the type of bad behavior for which judges can be impeached.

Third, Douglas, as even his friends conceded, could be a nasty person, and while he could charm young girls into his bed and tell wonderful stories over a campfire, working for him could be hell. Like Murphy, I also interviewed a number of Douglas's law clerks, and like him I got the stories of how meanly he treated people who worked for him.[5] The clerks and his secretaries called him "Old Shithead" behind his back, and some of the tales of his treatment of the clerks makes one wonder why anyone would stay past the first week. Yet stay they did, and here I think Murphy has missed something. The year with Douglas at the Court meant a great deal to them, and as several said, even though he worked them mercilessly, he worked just as hard. Some, including Vern Countryman and Jerome Falk, became and remained his friends.[6]

Murphy also has some problems with Douglas the academician, and again, while Douglas himself gave us many of these stories, Murphy fills in the blanks and adds some correctives. What is strange, though, is that he seems to disapprove of what Douglas did in his academic years at Columbia and Yale. He wrote a letter resigning from the Columbia Law School, but held off sending it until he landed an even better position at Yale under Robert Maynard Hutchins, the *wunderkind* of the academic world in those days. When Hutchins left the Yale Law School to become president of the University of Chicago, he tried to lure Douglas out there, and Douglas in essence played a very clever game of promising to go to Chicago after getting a lucrative offer, and then having Yale match or better it. He would then delay going to Chicago (even though they listed his name as among the faculty) until Hutchins raised the ante again, at which point Douglas managed to get the Yale Corporation to come through. In the end he stayed at Yale, with a high salary and an endowed chair.

Murphy writes as if Douglas was somehow unethical here, while Hutchins and the Yale people acted in good faith and were misled or bamboozled by the kid from Yakima. Somehow or other, among the many words that contemporaries used to describe Hutchins, na=ve was not one of them. Douglas was a star of the Realist movement, and in today's academic world we are all too familiar with how stars can negotiate their way to large salaries, well-financed research funds, graduate assistants, and low teaching loads by letting their home schools know about the offers they have gotten elsewhere. Douglas, I would suggest, was just ahead of his time, and while deans and others may not like these new facts of life, they, too, have learned how to play the game.

A more serious charge is that Douglas never really did the work; he just had the "big" ideas, got them funded, and then had student assistants do the actual work. To historians or political scientists, used to doing most of

the research and all of the writing themselves, this may seem strange, but it has long been the norm in the hard sciences as well as the social sciences. I have, in my academic career, been asked at times to serve on search committees in those areas, and am always amazed at the number of articles that have three, four, or five authors, one of whom is the lab head and the others graduate students. Murphy himself seems to acknowledge that Douglas had the right "big idea," and those ideas, which he did articulate in speeches and articles, got him noticed in the right places, leading to Washington and the Securities and Exchange Commission, and eventually to the Court.

Later on, in order to meet his multiple alimony payments, pay the expenses of his various girl friends, and maintain his life style, Douglas wrote almost a book a year, and here too he seems to have outlined what he wanted to do, and then had assistants, often his law clerks, do the actual research and then write drafts, which he or someone else polished into the published piece. The public thought they were reading Douglas; they weren't, at least not in the sense that we would ascribe to works we think had been written by a particular person. In the era before we just assumed that all famous people used ghost-writers, Douglas did, but as usual claimed all the credit for himself.

By now, many people have read Richard Posner's vitriolic review of the book, in which he praised Murphy for damning Douglas as a horrible person, and then damned Murphy for praising Douglas's liberal jurisprudence.[7] There is no question that Murphy approves of Douglas's liberalism and judicial activism, but the treatment of the Court work is in many places superficial, and the analysis of the decisions simplistic or downright absent. Murphy spends pages on Douglas's divorces and affairs, and chapters on his presidential ambitions, yet there are only a few instances where we get more than a rough skimming of a judicial opinion.

Take, for example, Douglas's tax opinions. The problem is that Murphy never looks at them, and yet they tell us an interesting story about Douglas, one that, had Murphy been aware of it, would have buttressed his argument that Douglas's over-riding *weltgeist* in his later years was to take government off the backs of the people. During his exceptionally long tenure on the high court, Douglas voted in 278 federal tax cases. Bernard Wolfman, in an analysis of these votes, found that in his early years on the Court, Douglas wrote many tax opinions sustaining the Government's position. Then he began to dissent, usually in favor of the taxpayer, often alone without opinion, or with only a few words. In the last fifteen years he served on the Court, according to Wolfman, "Douglas's positions in tax cases have been marked by a strong disposition in favor of taxpayers' positions, a lack of sympathy with the administration of the Internal Revenue Service ... and an increasing failure to explain his votes in well-reasoned opinions."[8] Although Murphy cites the Wolfman book in his bibliography, there is no effort to explain this. Given the dire financial situation Douglas found himself in because of his divorce agreements, where he often realized less than thirty cents on every dollar he made, one might have conjectured that he saw the tax system as one more imposition on him. I do not know if this is so, but how can we have a biography of a justice without taking into account a sustained voting pattern in an important federal area?

Murphy tells us, in his first mention of *Skinner v. Oklahoma* (1942)[9] that although "Douglas demonstrated his willingness to rule expansively on behalf of human rights," despite this hint "Douglas had yet to concern himself with the development of an overall judicial philosophy." (p. 201) Later on Murphy refers back to *Skinner* as a foreshadowing of Douglas's concern for the poor, and this helps explain his opinion striking down the state poll tax in *Harper v. Virginia Board of Elections* (1966).[10] While it is true that Douglas, as much as anyone on the Court other than Thurgood Marshall, had great sympathy for the poor, *Skinner* is an important case in a development that Murphy fails to explicate–Douglas's role in the revival of the Equal Protection Clause.

As late as 1927, in his opinion in the Virginia forced-sterilization case, Justice Oliver Wendell Holmes, Jr., derided the Clause as "the usual last result of constitutional arguments,"[11] and thus seemingly cut off any further equal protection argument. The abuse of substantive due process in the 1920s and 1930s had made the use of the Due Process Clause also untenable for liberal justices from the early 1940s well into the 1960s. So in *Skinner*, a case where Oklahoma mandated sterilization for habitual criminals, Douglas faced a jurisprudential environment that seemingly negated both due process and equal protection arguments. What makes this opinion so important is that Douglas cut through this Gordian knot by noting that the law did not apply equally to all felons because it made an exception for embezzlers.

This opened the door to equal protection analysis, and Douglas charged right through. He identified the right to procreate as a fundamental right, and concluded that any legislation restricting that right would be subject

to strict judicial scrutiny. Douglas took Stone's famous footnote 4 in *Carolene Products*[12] and showed, for the first time, how it could function to protect the rights of the disadvantaged. Moreover, the test he proposed, strict scrutiny, and the way it would be applied, became the standard for equal protection analysis afterwards. In the twenty-three years between *Skinner* and Douglas's opinion in *Griswold v. Connecticut* (1965),[13] the Court began to make more and more substantive judgments using the Equal Protection Clause, and in every case followed Douglas's reasoning.

To say, as Murphy does, that as of 1963 Douglas "had not been a major factor in many of the earlier race cases" (p. 382) is to ignore the plain fact that all of those earlier race cases had been decided using criteria and methods developed by Douglas. Nearly all studies of *Brown v. Board of Education* (1954)[14] note that from the start Douglas was willing to reverse *Plessy v. Ferguson* (1896),[15] and that, in fact, Douglas and Black were often alone in their willingness to tackle this issue. In the Douglas Papers, there is an interesting 1960 memorandum on *United States v. Thomas*,[16] a case involving discriminatory usage of voter challenges to disqualify African-Americans:

During the Conference discussion Frankfurter got very heated. *He recalled how I, as far back as 1946, was urging the Court to meet the segregation issue and bring cases up.* He said if the cases had been brought up then he would have voted that segregation in the schools was constitutional because "public opinion had not then crystallized against it." He said the arrival of the Eisenhower Court heralded a change in public opinion on this subject and therefore enabled him to vote against segregation. Bill Brennan's response was "God Almighty!" (emphasis added)

Douglas and his close ally for the first quarter-century he served on the Court, Hugo Black, began to drift apart in the late 1960s, and while Murphy notes this, again we get no sustained analysis of why this happened. Murphy might have made such an analysis in the case of *Bell v. Maryland* (1964),[18] but although he quotes the Douglas opinion at length and approvingly (pp. 382-383), he misses the larger picture.

Bell was one of many sit-in cases that came before the Court in the early 1960s, and it found the justices highly divided in their reasoning. Prior to the Civil Rights Act of 1964, restaurants had been considered private, and in the absence of any state law commanding segregation, they retained the right to grant or refuse service to anyone they chose. A protester sitting in at a lunch counter or in a restaurant therefore violated the owner's property rights and could be prosecuted for trespass or disturbing the peace.

Although obviously in sympathy with the protesters, the Court failed to develop a rule to cover the situation. Douglas alone appeared willing to eliminate the distinction between state action and private discrimination, but his colleagues believed that some forms of private discrimination are permissible in a free society. He received more support when he suggested that restaurants and hotels should not be seen as totally private, but as a type of public activity, and therefore subject to law. Under the old common law, common carriers, for example, had to offer their services without discrimination.

The Court set aside all the convictions without, in most instances, even providing a sustained rationale. In the first sit-in case, *Garner v. Louisiana* (1961),[19] the majority dismissed the disturbing the peace conviction for an alleged lack of "evidentiary support." The following year, in *Taylor v. Louisiana*,[20] the Court overturned the breach of peace convictions of blacks who had "invaded" an all-white waiting room in a bus station. The protesters had been orderly and polite, and in any event, segregation in an interstate transportation facility violated federal law. When it could, the Court invoked the First Amendment to protect the right of peaceful protest, as in *Edwards v. South Carolina* (1963).[21]

More sit-in cases reached the Court in 1963 and 1964, and the justices continued to vacate convictions on narrow technical grounds. Only in *Bell v. Maryland* did six of the justices reach the broader issue of state action, and they divided three to three. The case arose from the conviction of twelve sit-in demonstrators under Maryland's criminal trespass law. After their conviction, however, the state enacted a public accommodations law forbidding restaurants and similar facilities from refusing service because of race, so that the offense for which the twelve had been convicted no longer constituted a crime in Maryland. Justice Brennan's opinion for the Court simply vacated the lower court ruling, and remanded the case for further consideration in light of the new state law.

But Justice Black would have none of this, and initially he had managed to cobble together a 5-4 majority to keep the protesters in jail. The man from Alabama who had been one of the strongest supporters of the decision to end segregation now feared that militant civil-rights activism could trigger anarchy and social disorder. Even-

tually he lost his majority, but for the first time members of the Court actually addressed the substantive issues in the sit-in cases.

Justice Douglas entered a lengthy opinion, joined by Justice Goldberg and Chief Justice Warren, arguing that restaurants constituted businesses dealing with the public, and therefore came within the state action doctrine enunciated in *Shelley v. Kraemer.*[22] Justice Black, joined by Justices Harlan and White, took a far narrower view of both *Shelley* and Section 1 of the Fourteenth Amendment. What is fascinating about the Black and Douglas opinions is that they both refer to the same sources, sometimes even the same passages, to reach diametrically opposite results. The justices did not have a good jurisprudential basis here, although the one Douglas offered would eventually be adopted in the Civil Rights Act of 1964, and then by the Court in other segregation cases involving public facilities.

The interplay among the justices on the Court, and the relation of the Court to events going on outside the marble palace, are areas that receive proper attention from Murphy in only two instances. One is the bad feeling between Douglas and Felix Frankfurter that began shortly after Douglas joined the Court and refused to be Frankfurter's acolyte, and lasted until Frankfurter left the Court following a stroke in 1962. The other is the convoluted story of the Rosenberg spy case in 1953. To anyone even slightly familiar with the workings of the Court, Murphy's picture of particular cases will be missing large parts. Let me suggest that the reader look at Murphy's treatment of *Douglas v. California* (1963) (pp. 379-380)[23] and the treatment of the same case in Lucas Powe's history of the Warren Court.[24] The proper way to understand *Douglas* is that it was one of three cases all raising the same issue, whether the holding in *Betts v. Brady* (1942)[24] should be over-ruled and the Sixth Amendment right of counsel applied to the states. Once Frankfurter left the Court a majority existed to do that, but Earl Warren wanted a case that would have popular appeal.

Two cases, *Carnley v. Cochran*[26] and *Douglas v. California*, raised the issue of right to counsel. But Willard Carnley had been convicted on clear evidence of incest and indecent assault upon a minor, while William Douglas (the California defendant), had a lawyer, an overworked public defender, who failed to provide proper representation. But Douglas was clearly guilty, since the problem arose when Bennie Meyes, his partner in a robbery and murder attempt, turned state's evidence, and the public defender continued to represent both men. Neither case gave Warren the defendant he was looking for–someone accused of a less heinous crime than incest or attempted murder, who might conceivably be innocent, and whose case provided an ideal platform upon which to reverse *Betts*. So the Court, in order to carry out the intent of the Sixth Amendment, overturned both convictions on the "special circumstances" rule of *Betts*, and it was in this instance that Douglas wrote his dissent, calling for full application of the Sixth Amendment to the states.

Enter Clarence Earl Gideon, and the rest, as they say, is history–except that history is missing from Murphy. There is no mention of *Gideon v. Wainwright*[27] in Murphy, nor is there any reference to Powe's book in the bibliography, although it predates the publication of *Wild Bill* by three years. But even if he had not had the chance to see Powe's book, that information is available in the case files of the Warren Court. Powe is right in that William O. Douglas's opinion in *Douglas v. California* became the basis for the Court's opinion in *Gideon.* Douglas did have influence here, but one would not know it from Murphy.

Granted, Murphy is writing a history of William Douglas, and not of the Supreme Court on which he sat for more than thirty-six years, but Douglas was a justice of that Court, and in the end his opinions will matter far more than his marital infidelities. He helped to establish a constitutionally protected right to privacy, for example, and his views on the First Amendment have been incorporated, even if not always acknowledged, by the Court. No one would expect a biographer to go through and parse each and every opinion, although Murphy seemed to feel that each and every non-judicial indiscretion deserved microscopic examination.

There is a great deal more that Murphy could have–and should have–written in regard to Mr. Justice Douglas. His narrative of *Dennis v. United States*[28] takes up less than two pages, and focuses more on how Douglas wrote the dissent than on its importance in First Amendment jurisprudence. He ignores the entire sorry record of the Vinson Court in matters of internal security, how vilified Douglas was at the time by the law reviews who took their cue from Felix Frankfurter's disciples, and how in the end Douglas was vindicated. Dennis would have been a good platform on which to discuss Douglas's views of free speech and the First Amendment, because I and others think there is a consistent jurisprudence here.[29]

Similarly, the discussion of Douglas's concurring opinion in *Roe v. Wade* (1973)[30] takes about a page (pp. 458-459), and totally ignores the problems the Court had in reaching that opinion, and how Douglas throughout kept pressure on Harry Blackmun to produce an opinion that embodied what the majority had decided, namely, that the right of privacy first enunciated by Douglas in *Griswold* extended to include a woman's right to control her reproductive functions, even to the point of securing an abortion.[31]

I mention these cases because although Douglas, especially in his later years, seemed to be a lone ranger on the Court, in fact he exercised a great deal of influence, in no small measure due to his brilliance and his institutional memory. Even justices who served with him toward the end, and acknowledged that he did not seem to be devoting his whole attention to the work of the Court, acknowledged that influence. The portrait of "Wild Bill" is missing this part–this very important part–of Douglas's life.

Anyone who has followed the controversies raised by this book are also aware of the lengthy memo put out by David Danelski, who has also been at work for many years on a biography of Douglas.[32] In it Danelski takes particular umbrage at two charges leveled by Murphy, namely, that the justice never had polio when he was a child, and that he lied about his military record in order to be buried in Arlington National Cemetery. On the matter of polio, I am not convinced by either person. It appears that Douglas was quite sick as a child, and since in the very early days of the twentieth century relatively little was known about polio, it is possible that he had a form that did not cripple him.

As for the military service, Murphy is right in that Douglas did not serve in the regular army, but Danelski has the better argument–and the proof–that service in the Student Army Training Corps at Whitman College counted as army service. Douglas surely, however, exaggerated what he did, but Murphy, intent on seeing the seamier side of Douglas, apparently, according to Danelski, engaged in some pretty poor research here. Danelski also seems to have better evidence regarding Douglas's father, whom Murphy believes treated his family poorly, and was not the warm-hearted parent portrayed in Douglas's memoirs.

In conclusion, we still do not have a good biography of William O. Douglas, one that treats all aspects of his life and work. It is possible that Danelski's book will paint a more flattering portrait of Douglas the man, but the evidence is all too plentiful that Douglas in his relations with women, underlings, and even colleagues was not nice at all. Murphy, whose previous works have shown him to be a fairly careful researcher, has amassed so much damning evidence that even if half of it is true, Bill Douglas the man is beyond biographical redemption.

But Mr. Justice Douglas, on the other hand, deserves far better than he receives here, and this from a writer who is openly sympathetic to the liberal, activist jurisprudence of his subject. Murphy is so intent on exposing every flaw in Douglas the man that he often seems to be writing the sections on the Court as filler for one more juicy tidbit of Douglas the womanizer, Douglas the spendthrift, Douglas the miserable boss.

Wild Bill Douglas may have gotten what he deserved from Murphy; Mr. Justice Douglas is still in need of a biographer, one who understands the Court and its workings, and the lasting importance of Douglas's jurisprudence.

Notes

[1]. Richard A. Posner, "Judicial Biography," 70 *New York University Law Review* 502 (1995).

[2]. Melvin I. Urofsky, "Beyond the Bottom Line: The Value of Judicial Biography," 1998 *Journal of Supreme Court History* 143 (no. 2, 1998).

[3]. Bruce Allen Murphy, *The Brandeis/Frankfurter Connection* (New York, 1982).

[4]. James F. Simon, *Independent Journey: The Life of William O. Douglas* (New York, 1980).

[5]. Melvin I. Urofsky, "Getting the Job Done: William O. Douglas and Collegiality in the Supreme Court," in Stephen L. Wasby, ed., *"He Shall Not Pass This Way Again": The Legacy of Justice William O. Douglas* (Pittsburgh, 1990), pp. 33-49, esp. pp. 37-41.

[6]. Melvin I. Urofsky, "William O. Douglas and His Clerks," 3 *Western Legal History* 1 (1990).

[7]. Richard A. Posner, "The Anti-Hero," *The New Republic* (24 February 2003).

[8]. Bernard Wolfman, et al., *Dissent without Opinion: The Behavior of Justice William O. Douglas in Federal Tax Cases* (Philadelphia, 1975), p. 4; an earlier version appeared as "The Behavior of Justice Douglas in Federal Tax Cases," 122 *University of Pennsylvania Law Review* 235 (1973).

[9]. 316 U.S. 535 (1942).

[10]. 383 U.S. 663 (1966).

[11]. *Buck v. Bell*, 274 U.S. 200, 208 (1927).

[12]. *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).

[13]. 381 U.S. 479 (1965).

[14]. 347 U.S. 483 (1954).

[15]. 163 U.S. 537 (1896).

[16]. 362 U.S. 58 (1960).

[17]. Douglas, "Memorandum," 25 January 1960, William O. Douglas Papers, Library of Congress. Reprinted in Melvin I. Urofsky, ed., *The Douglas Letters: Selections from the Private Papers of Justice William O. Douglas* (Washington, 1987), p. 169.

[18]. 378 U.S. 226 (1964).

[19]. 368 U.S. 157 (1961).

[20]. 370 U.S. 154 (1962).

[21]. 372 U.S. 229 (1963).

[22]. 334 U.S. 1 (1948).

[23]. 372 U.S. 353 (1963).

[24]. Lucas A. Powe, Jr., *The Warren Court and American Politics* (Cambridge, 2000), pp. 383-85.

[25]. 316 U.S. 455 (1942).

[26]. 369 U.S. 506 (1962).

[27]. 372 U.S. 335 (1963).

[28]. 341 U.S. 494 (1951)

[29]. See, for example, Dorothy J. Glancy, "Getting Government Off the Backs of the People: The Right of Privacy and Freedom of Expression in the Opinions of Justice William O. Douglas," 21 *Santa Clara Law Review* 1047 (1981), and Lucas A. Powe, Jr., "Justice Douglas After Fifty Years: The First Amendment, McCarthyism, and Rights," 6 *Constitutional Commentary* 267 (1989).

[30]. 410 U.S. 113 (1973).

[31]. The story is told in Bob Woodward and Scott Armstrong, *The Brethren: Inside the Supreme Court* (New York, 1979), pp. 271-84. Douglas's efforts to prevent Burger from sidetracking the case or having it reargued are detailed in Urofsky, *Douglas Letters*, pp. 180-87.

[32]. David J. Danelski, "An Open Letter Concerning *Wild Bill: The Legend and Life of William O. Douglas* by Bruce Allen Murphy," 10 April 2002 [sic]. Copy in author's possession.

Citation: Melvin I. Urofsky. Review of Murphy, Bruce Allen, *Wild Bill: The Legend and Life of William O. Douglas*. H-Law, H-Net Reviews. June, 2003.

URL: http://www.h-net.org/reviews/showrev.php?id=7726