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Douglas Quits Supreme Court; Ford Hails 36½-Year Service

Poor Health Cited— Woman Successor Reported Studied

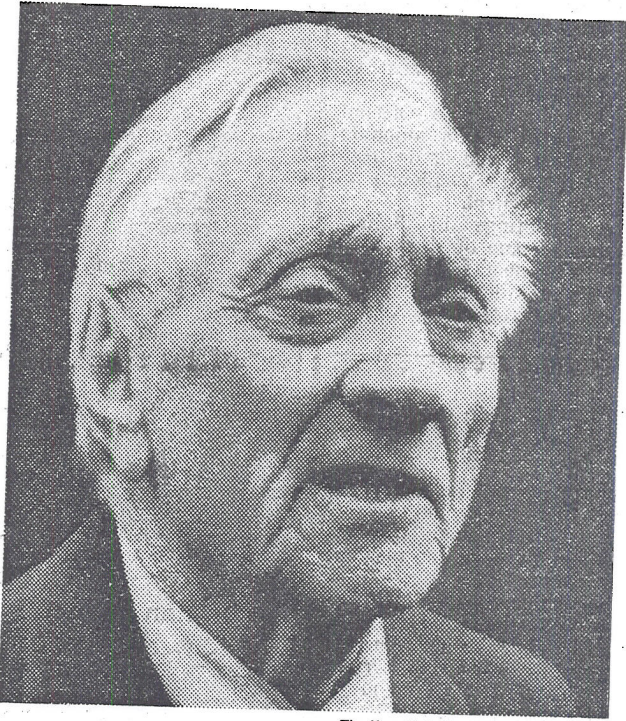
By LESLEY OELSNER

Special to The New York Times

WASHINGTON, Nov. 12—William O. Douglas retired from the Supreme Court today because of his failing health, ending a record 36½-year term on the court as one of the nation's most adamant—and controversial—defenders of the liberal view of the Constitution.

His retirement was announced at 5 P.M., several

Text of Douglas, Ford and Burger statements, Page 60.



The New York Times/Edward Hausner

Associate Justice William O. Douglas

hours after he had sat in the Court's marble-columned courtroom listening to part of the day's oral arguments. Statements of praise came immediately from President Ford, Justices of the Court and others.

The retirement produced immediate speculation on whom Mr. Ford would appoint as a successor—and on the impact of the retirement on the decisions of the Court.

The President was reported by high Administration sources tonight to be actively considering the appointment of a woman, the first woman Justice in the Court's history. It was widely expected as well that he would select someone of a far more conservative philosophy than Justice Douglas. [Page 60.]

The 77-year-old Justice notified President Ford of his retirement in a letter, saying:

"It was my hope, when I returned to Washington in Sep-

tember, that I would be able to continue to participate in the work of the Supreme Court.

"I have learned, however, after these last two months, that it would be inadvisable for me to attempt to carry on the duties required of a member of the Court. I have been bothered with incessant and demanding pain which depletes my energy to the extent that I have been unable to shoulder my full share of the burden."

President Ford, who in 1970 as a Representative led the last of three abortive efforts to impeach Justice Douglas, replied by letter: "Your distinguished years of service are unequalled in all the history of the Court."

The President said that he had read the Justice's letter with "profound personal sym-

pathy," and expressed "on behalf of all our countrymen this nation's great gratitude for your more than 36 years as a member of the Supreme Court."

Justice Douglas was consistently on the co-called "Liberal end" throughout his long years on the Court. If President Ford picks a more conservative Justice, as expected, the Court's philosophical make-up will thus obviously change.

But Justice Douglas was also, through those years, the great dissenter—indeed, he was revered by a generation of law students for those dissents. The dissents were sometimes adopted by the Court in later opinions and thus had great impact; at the same time, however, he

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was considered a leader for the other Justices.

Also, the Court has changed in tone from its activist role when Earl Warren was Chief Justice. It is not as predictable nor its voting patterns as solid, as some had expected under the present Chief Justice, Warren E. Burger. But at the same time, the views of Justice Douglas have for some time often been minority views.

His retirement is thus not likely to lead to any dramatic shift in the Court's direction on various legal issues. The impact, instead, is likely to be seen in other ways.

In very close cases, his absence may cause a different decision. On the death penalty, for instance, the Court's last ruling was 5 to 4, with Justice Douglas in the majority, outlawing capital punishment as then practiced in America.

Also, in First Amendment cases, his distinct philosophy will no longer be expressed. On the subject of obscenity, for instance, he had a standard one-paragraph dissenting opinion, in which he invariably noted that in line with his definition of the First Amendment's free speech rights, he would summarily reverse obscenity convictions.

His absence will also probably have an effect in a far more subtle way, less easy to discern. For more than any other Justice, he had become something of a familiar institution, both to the other Justices and to lawyers and law students across the country, known to all, among other things, for his absolute support of and belief in his interpretation of the Constitution and especially of the Bill of Rights.

Chief Justice Warren E. Burger, often at odds ideologically with Justice Douglas, issued a statement that the Justice's long service on the Court "sets a record that may never be equaled." The retirement, he said, "brings to a close a career unique in the annals of the Court."

Associate Justice Potter Stewart said: "William O. Douglas stands uniquely alone in the history of our Court and our country. As one of his junior colleagues, I have long admired his intellect, his independence, his energy and his vision. I salute him now as a man of extraordinary courage."

Ailing for Nearly Year

Justice Douglas has been in poor health since he suffered a stroke last New Year's Eve. He missed several months of last year's Court term as a result. He returned to the Court this fall apparently determined to stay on the bench and, as well, to end doubts about his ability to do so; he missed many of the Court sessions, however, and was hospitalized twice.

Lawyers, reporters and the other Justices found themselves waiting for some sign from Justice Douglas, now pale and tired-looking, about his health and about his intentions. The other Justices were known to have taken the position that there was little they could do for the moment, but wait to see what developed.

There is no constitutional means for forcing an ailing Justice to retire, so the Court has a tradition, followed a number of times in the past, of other Justices' asking the ailing one to retire. In the case of Justice Douglas, though, no action was reported taken.

According to one insider, Justice Douglas's retirement is "entirely" his own decision.

The nine Justices gathered in their huge wood-paneled dining

room at the Court today, to celebrate Justice Harry A. Blackman's birthday. All knew at lunch of Justice Douglas's plans, and, as one Court official put it, it was "a sad day."

The reason for the retirement was generally believed to be exactly what Justice Douglas described in his letter to the President—"incessant and demanding pain." Justice Douglas had seemed determined to remain on the Court as long as he physically could—in part, some observers suggested, to prevent Mr. Ford from picking his successor.

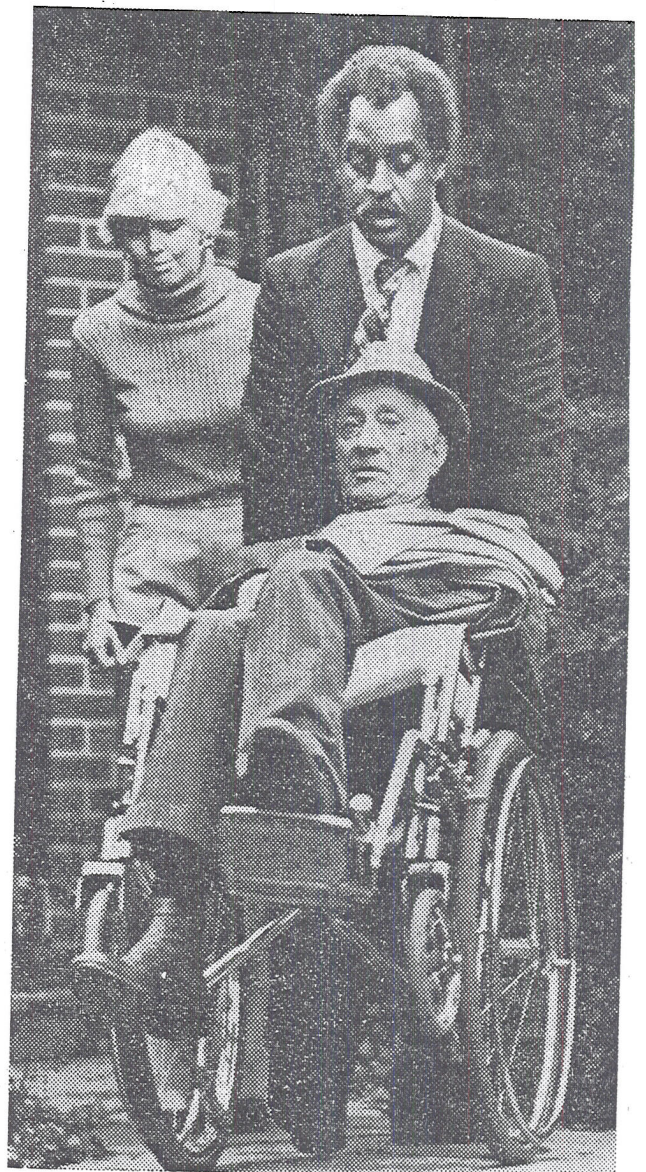
Hospitalized Recently

The Justice was hospitalized for a few days recently for what was described as "a slight fever" and last Thursday, went to New York to the Rusk Institute for a checkup.

Justice Douglas described the pain thus in his letter to Mr. Ford:

"During the hours of oral argument last week pain made it necessary to leave the bench several times. I have had to leave several times this week also. I shall continue to seek relief from this unabated pain but there is no bright prospect in view."

Justice Douglas was appointed to the Court by President Franklin D. Roosevelt and took his seat April 17, 1939. In October 1973, he became the longest sitting Justice on the Court.



The New York Times/Teresa Zabala
Justice William O. Douglas leaving for work last month with his wife and Harry F. Datcher, an aide.