

# Justice Douglas—cloudy

WASHINGTON — Supreme Court Justice William O. Douglas, crippled by a stroke, will be 77 on Thursday, and his health has emerged as a major concern of the court's 1975-76 term.

There are still no clear answers to the questions about Douglas' health, but one week into his 37th term on the bench, a few clues have emerged.

Although Douglas refused an interview, conversations with persons who have been associated with him, and observation of his public appearances, yielded this picture:

- He looks better, more animated, than he did in his few days at the court last term after his Dec. 31 stroke.

- Always quiet, he has apparently lapsed into complete silence on the bench.

- He once had to go lie down at 10 a.m., missing arguments in a case.

- Off the bench, he is capable of pertinent observations and searching questions — and of long silences and occasional irrelevancies.

What does all this mean for his future on the court?

He has said he will remain as long as he finds the work challenging. His colleagues are not commenting.

Former Justice Arthur Goldberg thinks it is simply too early to say how he is progressing.

"I think Justice Douglas is entitled to a reasonable length of time in which to establish whether he has been inhibited in his judicial performance," Goldberg said.

"I don't think enough time has elapsed for such a judgment to be made."

A random check of persons who have been in court during Douglas's 11 hours on the bench this session turned up none who had heard him ask a question.

Douglas moves around the court building in a wheelchair. His left side is paralyzed. To hear arguments, he is lifted into his customary caster-equipped padded chair and pushed up a ramp to the bench.

The justices' chairs are equipped with rockers, but Douglas does not rock. He occasionally leans forward, he studies papers in front of him, he whispers instructions to court attendants, he

occasionally nods or smiles in response to a whispered aside from Chief Justice Warren Burger.

At the end of a session, after all rise in the courtroom, the other justices walk out and Douglas is left facing the standing crowd until he is wheeled down the ramp.

It does not seem to bother him. A source who has been close to him, however, got the impression that the justice, a hardy outdoorsman for most of life, is pained by public exposure of his frailty.

At a hearing he held in Yakima, Wash., in September, the court was cleared so that he could be lifted to and from his seat at the bench.

That was the hearing at which Douglas proposed a 12:30 p.m. recess when it was actually 1 p.m. already. This led to suggestions that the justice's mental alertness was flagging. An observer who was in the courtroom offered another explanation: from where Douglas sat, he could see a clock which was out of order. It showed the time as 11:30 a.m.

After the recess, Douglas puzzled attorneys and newsmen by sitting silently for 9½ minutes before announcing his decision. Some suggested he was

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pondering.

Before entering the courtroom, however, he had been on the telephone to his office in Washington, apparently dictating his order, in which case he must have already made up his mind. The long silence was unexplained.

In one of its first orders of the new term, the full court overturned Douglas' decision. Some have asked if this was a signal of his colleagues' attitude toward him. However, such a reversal by the court is not exceptional.

Out of 678 other decisions announced by the court the same day, not counting routine procedural motions, Douglas participated in all but one. He dissented from 24. He took part in the justices' decision-making conference again on Friday.

Observers have described Douglas as alternately operating at his old pace and slowed down from it.

One person who has seen Douglas at work told of his spending about half an hour on one page of a summary of petitions to the court, then flipping through the remaining pages with the speed that has helped make him legendary.



**JUSTICE WILLIAM O. DOUGLAS**

Health a major concern