

Douglas Retires

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William O. Douglas, an outspoken and controversial member of the Supreme Court for a record 36 1/2 years, retired yesterday, saying the effects of a stroke Dec. 31 had left him unable to carry out his judicial duties any longer.

In a letter to President Ford, the 77-year-old Douglas said, "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."

He added that according to doctors,

"there is no bright prospect in view" for any relief from "this unabated pain."

Mr. Ford replied in an extraordinarily outgoing letter to the ailing justice:

"I want you to know first of all of my warm admiration for your valiant effort to carry on the duties of your high office, despite your recent illness, with the same courage and independent will that have characterized your long service to your country."

Douglas' resignation, which came after months of uncertainty about his health, removed from the court one of the legal giants of its history and appeared to presage a further turn in a conservative

direction that began after President Nixon took office in 1969. Between then and 1974, Nixon named four of the nine justices of the court, including the chief justice.

There was no immediate word from the White House about a successor or even about a field of potential candidates, although several names of legal luminaries and friends of President Ford were mentioned as possibilities.

There has been talk recently that a woman might be named, and Carla A. Hills, Secretary of Housing and Urban Development, has been among those prominently mentioned.

Others speculated about last night in

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legal circles were Attorney General Edward H. Levi and Solicitor General Robert H. Bork.

Tributes to Douglas from public officials and his associates in the law poured in from across the country. Leading the praise was Chief Justice Warren E. Burger who, according to Douglas' friends, earned the deep gratitude of the ailing justice for his kindness during Douglas' illness despite their strong differences in judicial philosophy.

Citing "a career unique in the annals of this court" spanning the tenure of five chief justices, Burger said Douglas had

"struggled valiantly" to overcome his physical handicaps.

He hailed Douglas as "a believer in our country" and, in a reference to his fame as an outdoorsman, added, "there are mountains in the world of ideas" that Douglas may yet climb.

Friends of Douglas confirmed that the unabated pain, accentuated by the need to spend long hours on the bench and in conference away from needed physical therapy, had overcome Douglas' renowned stamina and the determination he displayed during his battle to stay on the bench.

According to close friends the justice,

considered a genius by friend and foe alike, was unimpaired mentally but was constantly frustrated by the slowness of his recovery and by his inability to devote sustained amounts of time to his judicial work.

The justice was on the bench yesterday morning in what one intimate friend described as "his farewell" appearance.

Authoritative sources said Douglas had no contact with administration officials before making his decision. They added that despite continuing bitterness over Mr. Ford's effort in 1970, when he was a congressman to impeach Douglas, the

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justice's only consideration in resigning was his health. The much-discussed possibility that Douglas would hang on past the 1976 elections to frustrate Mr. Ford and improve prospects for a liberal replacement simply did not enter the picture, the sources said.

Mr. Ford initiated a House impeachment investigation in April, 1970, following the Senate rejection of two Nixon nominees for the court, Clement F. Haynsworth Jr. and G. Harrold Carswell. He charged that Douglas had violated judicial proprieties on and off the bench by publishing an article in an allegedly obscene magazine, by spending too much time on a foundation that drew income from a Nevada casino and by allegedly maintaining ties with crime figures.

The House Judiciary Committee threw out the charges in 1971, noting specifically that the accusation of gangster connections was totally unsupported by evidence.

On the bench yesterday Douglas listened without comment to arguments in a tax case and a labor case but was not present when lawyers argued, for the second time in eight months, a major voting rights case that had been held over for reargument — apparently because Douglas' vote was a potential tie-breaker.

The court has been closely divided in a number of cases, most importantly the constitutionality of the death penalty. A new decision on capital punishment and other major issues had appeared to hinge on the capacity of Douglas to cast the

deciding vote in 5-to-4 splits among the justices.

But in many areas of the law Douglas no longer represented a critical vote because he was part of a depleted band of justices which, only a few years earlier, had formed the activist majority of the so-called "Warren Court" under the leadership of the late Chief Justice Earl Warren.

Most commonly Douglas recently found himself in dissent on matters of civil liberties and government power over the individual, along with Justices William J. Brennan Jr. and Thurgood Marshall. In some cases involving First Amendment claims of free speech, press, and religion, they were joined by Justice Potter Stewart, but they needed the votes of other justices to prevail in a given controversy.

Still more commonly Douglas was found in solitary dissent.

Because of Douglas' strong libertarian views — considered by some conservatives to be extreme — it is believed likely that his replacement will mean the court will hand down still fewer decisions upholding the rights of individuals against state and federal governments and fewer rulings prodding courts to intervene in legal controversies at the behest of the poor and others seeking to use the judiciary as an instrument of "social change."

Douglas' retirement decision had its origins in his bout with the flu two weeks ago. This illness, unrelated to the partial paralysis and other ailments caused by the stroke, produced a slight temperature and Douglas entered Walter Reed Army hospital for treatment.

Doctors there examined him more thoroughly and told him candidly that he had little hope of improving if he maintained his court schedule. To verify this judgment he spent last weekend at the Rusk Institute in New York, where he had undergone his most promising therapy last summer.

The diagnosis there was the same. There was some hope, doctors said, only if he relinquished his burdens and availed himself of both rest and therapy.

The decision came more sharply into focus as days passed and it was virtually made by Tuesday night, friends said. His retirement should be a sharp and clear break at a time when it would be perceived as "completely voluntary" and before pressures for his resignation could build up in Congress and elsewhere. Under the Constitution, justices and federal judges serve during "good behavior" and can be removed only by impeachment for "high crimes and misdemeanors."

At his Northwest Washington home last evening, Douglas, confined to a wheel chair, was unable to speak much above a whisper, though his speech was coherent. Asked what he thought the court had accomplished during his tenure, he replied, "I think the court has been a moving force in bringing one nation out of many races."

His wife, Cathy, a lawyer here, said she admired his courage both for his attempt to continue serving and for facing the difficult decision to retire. She said they would continue to live in Washington.

Staff writers Don Oberdorfer, John M. Goshko, and Douglas Watson and special correspondent Joel D. Weis contributed to this article.