

DOUGLAS ON MEND AND KEEPS BUSY

But His Return to Bench Is
Not Seen Before March

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WASHINGTON, Jan. 30—Associate Justice William O. Douglas, who was partially paralyzed by a stroke New Year's Eve, is on the mend, but he will probably not be able to rejoin his colleagues on the United States Supreme Court before mid-March, at the earliest.

The official description of Justice Douglas's condition was changed from "serious" to "satisfactory" at Walter Reed Army Medical Center on Monday, and he is reportedly spending several hours a day reading court papers and dictating to his secretary in his hospital room.

It remains unclear, however, whether Justice Douglas is participating in any of the current decisions of the high court or whether he will be able to help decide the cases that were argued before the eight other Justices while he was incapacitated.

The best evidence, obscured by the cloak of secrecy traditionally drawn around the Supreme Court's decision-making, is that Justice Douglas has not yet cast an absentee vote on any court decision. He may not even have to miss being recorded on future rulings if his absence does not continue too much longer.

Absence Dismaying

The prospect of the high court's operating for any length of time with only eight members is one that dismays the Justices themselves, the parties to the disputes being weighed and the legal community as a whole.

As long as there are only eight votes being cast, a 4-to-4 tie is always a possibility. When this happens, the most recent decision on appeal is upheld, but no opinion is written because there is no majority, and, as a result, no binding national precedent is set on the legal issues involved.

During the four weeks that Mr. Douglas has been hospitalized, he has not participated in the weekly votes by the court as to whether the Justices will accept or reject requests that they hear and decide cases. They accept only about 150 a year of several thousand filed.

Name on Decisions

But Justice Douglas's name has continued to appear on formal decisions that the court has handed down in January. Although court officials decline to say when or where his votes were cast. It is almost certain that these cases were decided well before the first of the year and only released now.

As a general rule, the court votes on cases at the end of the week in which they are argued, and it takes two months or more to draft and revise the majority and minority opinions. All the decisions handed down while Mr. Douglas has been in the hospital involved cases argued well before Christmas.

The two dozen January cases that Justice Douglas missed hearing have presumably already been voted on, but there is no rule that would bar him from listening to the tapes of the arguments, reading the transcript and adding his vote to the record, any time before they are formally handed down, as have a number of Justices in the past.

If Mr. Douglas's return to the bench were postponed for several months, Chief Justice Warren E. Burger might rule that cases decided with majorities of five votes or more could not be held up any longer to await his vote but should be released to keep the flow of public information coming from the court.

Canvassed by Telephone

In some special circumstances in the past, when the court is in recess, Justices have been canvassed by telephone rather than participating in an official conference of the court. This was done most recently in August, 1973, when a legal attempt to halt the bombing of Cambodia failed.

Mr. Douglas, who is 76 years old, suffered some impairment in his left side as a result of the stroke. He has been receiving physical therapy at the hospital.

Some court cases that were dropped from the original January hearing schedule, reportedly so that Justice Douglas might attend the sessions later, appeared on the February schedule released yesterday, indicating that his colleagues did not expect him to reappear until March at the earliest.