

WARREN LEAVING COURT; G.O.P. BEGINS FIGHT TO BAR A SUCCESSION BEFORE 1969



The New York Times
ENDING JUDICIAL CAREER: Chief Justice Earl Warren
outside the Supreme Court. Mr. Warren will retire soon.

HE TELLS JOHNSON

Fortas Mentioned as Possible Successor to Chief Justice, 77

By FRED P. GRAHAM

WASHINGTON, June 21 — Chief Justice Earl Warren has quietly submitted his resignation to President Johnson after 15 years as the nation's highest-ranking judicial officer.

The 77-year-old jurist sent a letter to the President about a week ago stating his intention to retire soon after the end of the current Supreme Court term, which expired Monday.

Two Republican Senators, Robert P. Griffin of Michigan and John G. Tower of Texas, said in Senate speeches that they would fight any effort by Mr. Johnson, a "lame duck" President, to name a new Chief Justice in the fading months of his term.

Speculation by lawyers in and out of Government about a successor immediately centered on Justice Abe Fortas, who has remained a confidant of Mr. Johnson's since the President appointed him to the high bench in the summer of 1965.

Liberal Majority

Mr. Warren has been the leader of the liberal majority of what has come to be known as the "Warren Court," a Court that handed down landmark decisions requiring public school desegregation, legislative reapportionment, strict procedural safeguards for criminal defendants and other constitutional reforms.

The action of the Chief Justice prompted speculation that other senior Justices might soon retire, dissolving the familiar liberal balance of the Supreme Court and opening the way for new directions in its decisions.

However, soundings among associates of the other senior Justices, Hugo L. Black, 82, and William O. Douglas and John M. Harlan, both 69, indicated that none of these Justices were planning to step down soon.

Friends of the Chief Justice said that he told them of his retirement in confidence last week. Supreme Court spokesmen said he was in his office today, but they refused to comment and the Chief Justice could not be reached.

No Official Word

White House spokesmen maintained a "no comment" policy, but aides at the Supreme Court said that the next official word would come from the White House.

Even with the resignation still unofficial, it quickly took on political overtones.

Reports spread that the Chief Justice had chosen this moment to step down because he feared that Richard M. Nixon might win the Presidency and eventually have the opportunity to appoint Mr. Warren's successor.

Relations between the two former California politicians have been cool since 1952, when Governor Warren was seeking the Republican Presidential nomination and Senator Nixon backed Dwight D. Eisenhower.

More recently, Mr. Nixon became the only major party Presidential candidate to endorse the provisions of the omnibus crime control bill that seeks to overturn recent Su-

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preme Court confession rulings.

In naming a successor to Chief Justice Warren, President Johnson would have an opportunity to fill a position of great influence that has been held by only 13 men, including Mr. Warren, in the nation's history.

If Chief Justice Warren did resign to permit the appointment of a like-minded liberal, some believe Justice Fortas's Court record would qualify him nicely. He has also mollified his conservative critics by taking a sympathetic view of businessmen's problems with Government regulation.

The promotion of Justice Fortas to the bench's center seat would run counter to tradition; only Harlan Fiske Stone and Edward Douglass White were promoted from Associate to Chief Justice. But President Johnson is not a traditionalist, and the move would open the way for a second high court appointment.

This could be Attorney General Ramsey Clark, who would thus become the first son to follow his father to the Supreme Court. His father, Tom C. Clark, resigned last year.

Another appointment that would seem to be in keeping with Mr. Johnson's penchant for appointing close personal associates would be Judge Homer Thornberry, a former Texas Congressman who is now on the United States Court of Appeals for the Fifth Circuit.

However, President Johnson also enjoys making historic appointments, and this led to speculation, as it did when he was confronted with his two previous high court vacancies, that he would appoint a woman to the Supreme Court.

Federal District Judge Sarah T. Hughes, a long-time personal friend who administered the oath of office to Mr. Johnson in Dallas, was mentioned in connection with earlier appointments as satisfying both the personal and historic requirements. However, she will be 72 years old in August.

Goldberg Mentioned

Arthur J. Goldberg, chief United States representative at the United Nations, was also mentioned, but his prospects seem dimmer than they would have been a year ago. When Mr. Johnson persuaded him to leave the Court in 1965 to take the United Nations post as the successor to Adlai E. Stevenson, there was speculation of an understanding that Mr. Goldberg could return as the first Jewish Chief Justice if such an opportunity arose.

But when Mr. Goldberg announced his resignation from the United Nations position last April amid rumors of disagreement with the President on Vietnam policy, Mr. Johnson replied with a chilly note that seemed to mark Mr. Goldberg as an unlikely prospect for a future appointive plum.

Mr. Goldberg's successor, Justice Fortas, has fit comfortably into his Supreme Court role, despite some factors that might have created embarrassments.

Since he became a Justice he has continued to advise Mr. Johnson on a wide variety of matters and has even made telephone calls and drafted legal memoranda for the President. But these activities have had low public visibility and beyond some raised eyebrows in legal circles, they have passed virtually unnoticed.

He has avoided embarrassments over the activities of his former Washington law firm—Mr. Fortas's wife, Carolyn Agger Fortas, is a partner in the firm—by excusing himself from the firm's cases. Despite his recent publication of a booklet on civil disobedience, Justice Fortas has remained sufficiently noncontroversial to be considered a candidate for the appointment.

Chief Justice Warren is eligible to retire at his full salary of \$40,000 a year. A justice is entitled to retire with full pay at age 65 with 15 years on the bench or at 70 after 10 years' service.

Both Can Retire

Justices Black and Douglas could also retire at their full salaries of \$39,500 because both have served more than 15 years as justices.

Justice Harlan will complete his 15th year on the Federal bench on Feb. 10, 1969, and will then become eligible to retire. He has suffered from failing eyesight in recent years and for the last two years has employed three law clerks, rather than the usual two, to provide enough manpower so that they can read to him.

Justice Douglas underwent surgery recently to permit an electric pacemaker to be implanted in his abdomen to accelerate his heart beat. He was pale and weak of voice when he appeared on the bench last Monday, but an associate said today that he would not consider stepping down.

Justice Black at 82, is the fourth oldest man to sit on the Supreme Court. A close friend said that Justice Black wanted to surpass the record of Justice Oliver Wendell Holmes, who left the Court at the age of 90.