

Dispute Looms If Johnson Names Warren Successor

WASHINGTON (AP) — Three Republican senators say they will oppose any effort by President Johnson to name a new chief justice of the United States after Earl Warren steps down.

"For a 'lame duck' president to designate the leadership of the Supreme Court for many years in the future would break faith with our system and would be an affront to the American people," Sen. Robert P. Griffin, R-Mich., told the Senate.

"With the Court in adjournment and the American people about to pick a new Administration which may considerably reorient the philosophy of our national government, it would be a major mistake to presume today to fill such an important post," said Sen. John G. Tower, R-Tex.

Sen. Strom Thurmond, R-S.C., agreed with both of them, adding he was "delighted to hear Chief Justice Earl Warren will be retiring from the Supreme Court. I have long favored such a move."

All three commented yesterday in the wake of authorita-

tive reports that Warren had written Johnson of his intention to bow out after 15 controversial years that saw the barriers of school segregation tumble and guarantees of the rights of individuals vastly expanded.

Senate Judiciary Committee Chairman James O. Eastland, D-Miss., said he believes the elevation of an associate justice to chief justice needs Senate confirmation, as was done in 1941 when Franklin D. Roosevelt nominated Harlan Fiske Stone to succeed Charles Evans Hughes.

The Constitution says nothing about that specific point, spelling out only the need for Senate confirmation of a justice.

Both Johnson and Warren, however, are surely mindful it was the Senate that spearheaded in recent weeks the attack on the Court that resulted in the omnibus crime control bill Johnson signed into law the past week.

Some provisions of the bill are intended to overturn Court decisions that restricted the admissibility of confessions as evidence and eyewitness iden-

tifications made in police line-ups.

Despite the comments in the Senate, there was praise for Warren yesterday.

Arthur J. Goldberg, who left a position on the Court to become U.S. ambassador at the United Nations, called him "one of the greatest chief justices in the history of the United States."

Warren himself plans to return to California Tuesday for a summer vacation. In the Court tradition, he has been silent on the whole matter of retirement, as have his aides.

Speculation on why the 77-year-old Warren chose this particular time to step down centered on the belief he wished to ensure the liberal tradition of his Court, which President Johnson has mostly supported.

Another, but related theory, was offered by Fred Rodell, Yale University law professor and authority on the Supreme Court, who said Warren may be stepping out for fear Richard M. Nixon, as president, might appoint his successor.

Rodell said ill feeling be-

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tween Nixon and Warren goes back to 1952 when, Rodell said, Warren expressed an interest in the presidency.

Probable Johnson selections could be fairly accurately measured by the two high court appointments he has made — Abe Fortas and Thurgood Marshall.

Fortas has fit easily into the liberal majority on the bench.

And Marshall, the court's first Negro, had devoted the whole of his long legal career to civil rights advocacy.

Leading the list of potential chief justices, in talk at least, is Fortas, a long-time friend, confidant and adviser to the President.

Until Fortas' name came to the fore, Justice Brennan had been the man most talked about for chief, principally because his voting record on the court has been practically a match for Warren's own.

In either of those cases, there still would be a vacancy on the court itself to fill.

Goldberg, who is quitting as ambassador to the United Nations, is a leader in speculation for such vacancy although it is muted to some extent by reports of coolness between the White House and Goldberg over Vietnam.

Another in speculation for a spot on the court is Homer Thornberry, Austin, Tex., appellate judge, former congressman and old Johnson friend.

Former California Gov. Edmund Brown said Warren's decision "apparently was so that President Johnson would have the opportunity to appoint a successor." Brown, at Manila for dedication of a war memorial on Corregidor, said Warren "has had a great career. He's been a great chief justice."