

WARREN DEFENDS JOHNSON'S NAMING OF A SUCCESSOR

But He Will Return to Court
in October if Senate Has
Not Confirmed Fortas

IN RARE NEWS PARLEY

Refuses Comment on Report
He Was Resigning to Bar
Possible Nixon Nominee

6 July 68

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Special to The New York Times

WASHINGTON, July 5—Chief Justice Earl Warren rejected today the assertion that President Johnson was a "lame duck" President who should not appoint new members to the Supreme Court.

"As long as a man is President he has a right to perform the duties of his office," the Chief Justice said in his first formal news conference since submitting his resignation.

However, he declared that he would return to the Court in October if the Senate had not confirmed the nomination of Associate Justice Abe Fortas as his successor.

He said he "would be obliged under my oath" to stay on.

'A Continuous Body'

"There ought always to be a Chief Justice of the United States," he said, "because the Court is a continuous body and should have the leadership it is entitled to have."

He said that without its ninth member, the Court might become deadlocked, 4 to 4.

Mr. Warren, who has rarely spoken out on subjects of public controversy during his 15-year tenure on the bench, commented candidly on a wide range of topics.

Looking robust in a dark suit, green tie and California tan, he was more relaxed, care-free and far more communicative than he had been in a long time.

The news conference was held in the stately East Conference Room of the Supreme

Court, a room with white quartered oak paneling reaching up to a high, gold-leaf ceiling. Warren stood characteristically erect, with Chief Justice John Marshall gazing down over his left shoulder from a portrait on the wall.

100 Reporters Attend

About 100 reporters attended, although Court officials had said that Mr. Warren would discuss neither the business of the Court nor politics.

More than he had ever done before as Chief Justice, Mr. Warren touched upon both.

He rejected the premise on which 19 Senate Republicans are resisting the nomination of Mr. Fortas and that of Judge Homer Thornberry as Associate Justice. They have argued that because the President's term is almost over, his successor should make the appointment.

Because the Constitution limits each President to two terms, Mr. Warren said, under this argument every President serving

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his second term "would be a lame duck."

He invoked his customary rule against political comment only when he was asked about reports that he had resigned now because he feared that former Vice President Richard M. Nixon might win the Presidency in November and he preferred President Johnson to name a new Chief Justice.

Mr. Warren replied that he "left politics behind 15 years ago" and thus would not comment.

"I wouldn't dare to broach a subject of that nature myself because it would not be in character to do it," he said.

He said that he went to the White House on the morning of June 13 to inform Mr. Johnson of his decision to retire. According to Mr. Warren, they did not discuss his successor.

Later that day, he said, after the Justices completed their last conference of the Court term, he told them of his plans.

The news conference, Mr. Warren's first formal session with newsmen since he met with them on March 19, 1965, his 75th birthday, was arranged after a number of reporters asked to interview him. Cameramen were permitted to take pictures before he started to speak, and no sound recordings were permitted.

In the only somber note of the session, Mr. Warren said that he thought the nation was entering a new era of turbulence and dissent and that the



United Press International

SUPPORTS PRESIDENT: Chief Justice Earl Warren at his Washington news conference. He defended Mr. Johnson's right to appoint new members to the Supreme Court.

Supreme Court would inevitably be embroiled in the changes that it would bring.

"For a long, long time we have swept under the rug a number of problems that are basic to American life," he said. "They have piled up."

"There must be great adjustments of some kind, certainly in our society and possibly in the economy."

The most important decision of the Warren Court, he said, was one written not by himself but by Justice William J. Brennan Jr.—the reapportionment decision of 1962 in *Baker v. Carr*. Mr. Warren said that many of the problems that now confronted the nation could have been disposed of earlier if the legislatures had been properly apportioned before the Supreme Court required it.

Asked why he had not exercised his prerogative to write the *Baker v. Carr* opinion, he said:

"Well, gee, the Chief Justice doesn't write all of the important decisions."

Next in importance he cited the school desegregation decision of 1954, *Brown v. Board of Education*. Third on his list was *Gideon v. Wainwright* in 1963, which held that all defendants in serious criminal cases were entitled to legal counsel.

High Point of Tenure

During his long silence about Supreme Court matters, Mr. Warren was frequently reported to have considered the school desegregation decision as the high point of his tenure. "I never said that," he said today.

Asked if the Court would continue in the liberal path of the Warren Court, he said that this could not be predicted because a President could not be certain how a man would vote after he became a Justice.

"You do see things differently when you're on the Court," he said. "I've seen that myself."

He recalled that he had opposed reappointment when it was "a political question" in California and he was a politician.

"But you see it in a different perspective" on the Supreme Court, he said. He said he saw no inconsistency in his staunch advocacy of reappointment as a constitutional question.

He gave his views on such subjects as the following:

Capital punishment: "Throughout my life there has always been something to me that was repulsive to have the Government take a life when you are asking everyone else not to take a life." However, he said that the abolition of capital punishment should be

lent to the states. They are in a position to experiment with its effects, he said.

¶Compulsory retirement: "I have always been one who believed in a cut-off date." But he said that the same compulsory retirement date should be required of officials in the other branches of the Government.

¶"Judicial activism": "I'm not one of those who believe that something that is done for the first time is wrong." The Supreme Court has a duty to make decisions, even if they result in changes that cause the Court to be called too active, he said.

¶"Impeach Earl Warren" signs: "Once in a while I have wanted to answer back. You can't do that on the Court. You get in enough trouble writing opinions."

Residence Undecided

Mr. Warren has residences in Washington and California, and he has not yet decided whether he will continue to spend time in both places.

As a retired Justice he can sit as a judge on any Federal court other than the Supreme Court, but he said that he had not decided whether it would be proper for him to do so. He does not wish to embarrass the Justices by having them review

a ruling that he might make in a lower court.

Hinting that he would not devote all his time, if any, to writing memoirs, he said, "I have not kept a file, or a letter, or a scrap of paper for the purpose of writing a word."

But he said that retiring with a fishing pole would pall after a few days.

"I have to be busy," he said. "I will be busy."

Mr. Warren was asked the major frustrations of his tenure as Chief Justice.

He paused for a long moment, then broke into a wide smile and replied that he could not think of any.

"It has not been a frustrating experience," he said.