

-NEW YORK, FRIDA

# JOHNSON DECLINES TO NAME 2D MAN FOR CHIEF JUSTICE

Citing Current 'Prejudice,' He Asks Warren to Stay Until 'Reason' Prevails

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Special to The New York Times

WASHINGTON, Oct. 10 — President Johnson announced today that the "emotionalism, partisanship and prejudice" of the times had persuaded him not to nominate another person now for the office of Chief Justice of the United States.

Deploing the Senate's failure to confirm his earlier nomination of Abe Fortas to the position, the President called upon Chief Justice Earl Warren to stay on "until emotion subsides, reason and fairness prevail."

Chief Justice Warren promptly issued a one-sentence statement:

"The President's statement speaks for itself and calls for no additional elaboration by me."

The effect of the two announcements was to confirm an impression that was already widely held by observers here—that Mr. Johnson had decided not to attempt to rush another nomination through the Senate in the fading hours of the 90th Congress, which is expected to adjourn by the weekend.

However, the statements left Mr. Johnson with the option to name another nominee if the political climate improves between now and the end of his term on Jan. 20.

## Warren's Plans a Mystery

They also left the future plans of Chief Justice Warren swathed in the ambiguities that have surrounded them since the President announced on June 26 that he had accepted Mr. Warren's request to retire, "effective at such time as a successor is qualified."

Chief Justice Warren has strongly implied in private conversations that he definitely intends to retire and that the only question now is timing.

But he has passed up several opportunities, including today's, to make a public statement to that effect.

Today's events thus left the following options still open:

¶President Johnson could make a recess appointment after Congress adjourns. This possibility is considered the most remote, since Mr. Johnson went on record when he was a Senator as being opposed to recess appointments, and also because the appointee would lose the position if another person were nominated and confirmed.

¶President Johnson could make another appointment after Congress convenes on Jan. 3 and before his term ends on Jan. 20. The type of filibuster tactics that blocked the Fortas nomination would be futile at the start of a new Congressional session. If the

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Democrats fare well in the November elections, a Johnson nomination might succeed, even if Richard M. Nixon, the Republican candidate, wins the Presidency.

¶President Johnson could drop the matter and leave the nomination to his successor.

¶Chief Justice Warren could wait until after the November Presidential election and, if he does not like the result, rescind his tender of retirement. Confidence in Fortas Affirmed

Mr. Johnson's statement was released this morning by Georg E. Christian, the White House press secretary.

In it Mr. Johnson said: "I do not believe that I can find a person who is better qualified to succeed Chief Justice Warren . . . than Mr. Justice Fortas."

Mr. Johnson added his belief that if the Senate had been permitted to vote the appointments of both Justice Fortas and Judge Homer W. Thornberry, of the United States Appeals Court, would have been named to succeed Mr. Fortas, would have been confirmed.

Mr. Johnson concluded: "In ordinary times, I would feel it my duty now to send another name to the Senate for this high office. I shall not do so.

"These are not ordinary times. We are threatened by an emotionalism, partisanship, and prejudice that compel us to use great care if we are to avoid injury to our constitutional system."

Mr. Christian said he did not know of any communication between Mr. Johnson and Mr. Warren prior to the President's announcement.

When he was asked if the

# JOHNSON TERMED COOL TO RUSSELL

Invitations to White House Said to End for Senator

WASHINGTON, Oct. 10 (AP) — In the twilight of his White House tenure, President Johnson has cut his communication lines with one of his oldest friends and advisers, Senator Richard B. Russell, Democrat of Georgia.

More than three months ago they had a difference of opinion over a matter Mr. Russell will not even discuss with friends. The usual weekly invitations for the Georgia Senator to drop in for a chat with the President have not been forthcoming since then.

Except to confirm that there was a disagreement resolved in a way not to his liking, Mr. Russell will not comment on the matter.

If the White House follows its customary course it can be expected to deny that there is any rift between the President and the Senator and then move to bridge the breach it contends doesn't exist.

This strained relationship—even if it is only temporary—

President's statement intentionally left open the possibility of a subsequent nomination, Mr. Christian said, "I can't predict when these conditions [mentioned by Mr. Johnson] would change."

Mr. Johnson was referring to the emotional attacks on Mr. Fortas and the Court itself by Senators who complained of recent liberal court rulings on obscenity, criminal defendants' rights and anti-Communist legislation.

Some of these charges have been repeated by Mr. Nixon and George C. Wallace, the third-party candidate, in their Presidential campaigns. Vice President Humphrey has not criticized the Supreme Court in his campaign speeches.

TEXT OF STATEMENT  
Following is the statement by President Johnson on his decision not to name another candidate for Chief Justice now:

I have said that I do not believe that I can find a person who is better qualified to succeed Chief Justice Warren in the nation's highest judicial post than Mr. Justice Fortas.

interrupts a close association between the two men that dates back to 1949, when Mr. Johnson first took his seat as a Senator from Texas.

## Early Help in Career

It was Russell who organized the vote that made Mr. Johnson the Democratic whip. And it was the Georgia Senator who sewed up the commitments for Mr. Johnson as party leader when that post became vacant.

For years around the Senate, Mr. Johnson's admonition to colleagues and employes before embarking on any important legislative matter was always: "Check it with Dick first."

As chairman of the Senate Armed Services Committee, Mr. Russell has been among the staunchest supporters of Mr. Johnson's Vietnam policies.

He advised against getting involved at the beginning, but when American troops were committed, he supported the President's decisions.

Mr. Russell can claim almost sole credit for the operation of the battleship New Jersey in the Vietnam theater. He argued that a battleship could unload more firepower than a fleet of bombers; without risking being shot down, and Mr. Johnson agreed.

While he has been one of those regularly consulted before Vietnam policy decisions were finally made, Mr. Russell now gets his information on security matters from Secretary of Defense Clark M. Clifford instead of the White House.

Mr. Russell has accepted the situation philosophically and silently.

I deeply regret that the Senate filibuster prevented the Senate from voting on the nomination of Justice Fortas. Had the Senate been permitted to vote, I am confident that both Justice Fortas and Judge Thornberry would have been confirmed. Their qualifications are indisputable.

In ordinary times I would feel it my duty now to send another name to the Senate for this high office. I shall not do so.

These are not ordinary times. We are threatened by an emotionalism, partisanship and prejudice that compel us to use great care if

we are to avoid injury to our constitutional system.

Our distinguished Chief Justice had indicated his willingness to serve until his successor qualifies. Under the

circumstances, the foundations of government would be better served by the present Chief Justice remaining until emotionalism subsides, reason and fairness prevail.