

Nixon Outflanks LBJ on Chief Justice Appointment

By DREW PEARSON



JOHNSON

WASHINGTON—Relations between the President and President-elect, hitherto more cordial than between any other incoming and outgoing presidents, were disrupted when Nixon moved in on the question of continuing Chief Justice Earl Warren without any consultation whatsoever with Johnson.

Nixon's move had the earmarks of a quick double-play to block the interim appointment of former Justice Arthur Goldberg as chief justice.



WARREN

President Johnson has on his desk right now the resignation of Chief Justice Warren subject to action at any time. He can and still may act on it right up until noon of Jan. 20. And he had been debating such action when out of the clear blue, the President-elect phoned Chief Justice Warren asking him to remain as head of the court until June.

OBVIOUSLY IT WAS NOT NIXON'S prerogative to do this and, furthermore, both protocol and courtesy required him to call the President in advance of his request to Warren. Johnson has leaned over backward to clear with Nixon all questions of policy which affect the country during this interim period.

He cleared with Nixon beforehand the relatively minor matter of the invitation which Secretary of State Rusk conveyed to the NATO foreign ministers in Brussels to attend a NATO 20th anniversary in Washington next September.

He also has taken up with Nixon every detail of the Paris talks, and instructed Ambassador Averell Harriman to call on the President-elect to fill him in further. No step, has been taken in the Vietnam negotiations without informing Nixon.

THE PRESIDENT ALSO INFORMED
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NIXON

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VOL. 92—NO. 155

The Associated Press, North American Newspaper Alliance, NEA Service and AP Wirephoto

SATURDAY, DECEMBER 7, 1968

EYE ORBIT

DECEMBER 7, 1968

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the President-elect in some detail regarding his talks with premier Kosygin and his hopes to have one final conference. He even invited Mr. Nixon to accompany him to Europe, if the talks are finally held.

No President in half a century has been more cooperative toward the new administration, even ordering 17 State Department rooms placed at Nixon's disposal, 48 hours after the election—rooms which are still largely unoccupied.

Because of this there is some belief that Nixon called the chief justice deliberately in order to head off the President's plan to appoint former Justice Arthur Goldberg as chief justice. Mr. Johnson had been considering this idea ever since his nomination of Justice Abe Fortas to be chief justice was turned down by the Senate. He was not unmindful of the fact that as early as last July, Chief Justice Warren, when asked by the President whom should he appoint as his successor, at first declined to propose a successor, later had discreetly pointed out that the Middle West had no representation on the court and that former Justice Arthur Goldberg, who comes from Chicago, would make a great chief justice.

WHILE THE PRESIDENT PUT his old friend, Justice Fortas on his list, he did not forget Goldberg. Justice Goldberg had served as secretary of labor in the Kennedy cabinet, then on the Supreme Court, then agreed to resign to tackle the tough problems of Vietnam peace at the U.N.

In the course of considering Goldberg's

nomination as chief justice, he mentioned it to Nixon during their November luncheon. The appointment was delayed chiefly because the President was seriously considering calling the Senate into special session to act upon the non-proliferation nuclear pact, at which time he planned to ask for Goldberg's confirmation as chief justice.

Meanwhile several high-ranking Republicans had urged Nixon to go along with Goldberg's appointment, including former Attorney General Herbert Brownell and Max Fischer of Detroit, one of the biggest money raisers for the Nixon campaign.

It was against this background that the President-elect put in his private call to Chief Justice Warren.

THE CHIEF JUSTICE, WHO has been on the opposite sides on the Republican fence from Nixon, was caught by surprise. Nixon had sabotaged Warren's bid for the presidency in 1952 at the Chicago GOP convention. The two have not been cordial since.

So when the chief justice got the call from the President-elect asking him both to administer the oath of office and also continue until June, he acquiesced without realizing that it was President Johnson, not Nixon, who still had the decision to accept his resignation at any time up to Jan. 20. Nor did the chief justice realize that Arthur Goldberg, the man he very much wanted to be his successor, was on the verge of getting an interim appointment as chief justice.