

HARLAN RETIRES FROM HIGH COURT; ILL HEALTH CITED

Justice, 72, Sends a Note to President — Doctor Says He Has Bone Cancer

2D VACANCY FOR NIXON

Speculation Arises Over the Possibility of His Naming Woman and Southerner

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By JAMES M. NAUGHTON

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WASHINGTON, SEPT. 23—

Associate Justice John M. Harlan retired from the Supreme Court today after 16 years of service. His physician said that Mr. Harlan was afflicted with bone cancer.

The decision was conveyed to President Nixon in a typewritten note from the 72-year-old Justice, a patient in George Washington University Hospital.

Justice Harlan's decision came six days after the retirement, also for reasons of health, of Associate Justice Hugo L. Black.

The two vacancies give Mr. Nixon an opportunity to solidify the transformation of the Court into an instrument of his philosophy of judicial restraint.

Speculation on Woman

Ronald L. Ziegler, the White House press secretary, said that Mr. Nixon would act "as swiftly as possible" to fill the two vacancies on the nine-member Court with individuals whose views would be "compatible" with the President's philosophy of strict construction of the Constitution.

Immediate speculation focused on the possibility that Mr. Nixon would nominate the first woman Justice to fill one vacancy. He was already said to be searching for a Southerner as a successor to Justice Black, with most attention centered on Representative Richard H. Poff, Republican of Virginia.

No member of the Court in recent years was more attuned to the President's legal attitude than was Justice Harlan, whose hallmark was a determined adherence to judicial precedent.

Together with Mr. Nixon's two previous appointees—Chief Justice Warren E. Burger and Associate Justice Harry A. Blackmun — and with associate Justice Potter Stewart and Byron R. White, Justice Harlan had begun to set the pattern of judicial restraint pledged by Mr. Nixon in the 1968 Presidential campaign.

Praise From Nixon

Justice Harlan was not among the more prolific authors of Supreme Court opinions, but those he did write were regarded as models of legal precision. He viewed the Constitution and interpretations of it by his predecessors as guideposts for his own views rather than as a framework for declarations of new social policy.

Mr. Ziegler said that the President, in accepting Justice Harlan's decision to retire, had described him as "one of the great legal scholars in the history of the Court" and a jurist

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Black Suffers Stroke

Justice Black, who has been a patient at the Bethesda center since Aug. 28, was reported in very serious condition today after suffering a stroke. He had been under treatment for inflammation of the blood vessels.

The White House had said that Mr. Nixon was considering seven individuals, who were not named, to succeed Justice Black. Among the names figuring in the speculation were those of Charles Rhyne of North Carolina, an old friend of Mr. Nixon's from Duke University Law School days and a former president of the American Bar Association; Lewis F. Powell of Virginia, another former president of the bar asso-

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who would be remembered by future generations as a "towering figure."

Chief Justice Burger issued a statement calling Justice Harlan's retirement a "source of deep regret." He said that "the quality of his penetrating incisive mind and the grace of his spirit have made him a unique figure" but that Justice Harlan's wisdom would be available in his opinions on the Court.

White House officials said privately that they would not rule out the prospect that Mr. Nixon would nominate a woman to the high court, nor did they believe that his choices both must be Republicans.

One official said that what was most important was that the nominees reflect Mr. Nixon's philosophy and be young enough, preferably under the age of 50, to assure its dominance for some years.

"This is a historic opportunity," one White House official stated. "The next Court will be known as the Nixon Court, not as the Burger Court or the Warren Court" — the latter a reference to the liberal views that prevailed under retired Chief Justice Earl Warren.

Justice Harlan made known his plans to retire in the same fashion as Justice Black did last Friday, by letter to the President. Mr. Harlan was admitted to Bethesda Naval Medical Center on Aug. 16 for treatment of a back ailment. A week ago he was transferred to George Washington University Hospital.

After the White House announced this afternoon that Justice Harlan had retired, effective immediately, the Justice's physician, George A. Kelsler Jr., issued a statement in which he said that "recently completed examinations have demonstrated a cancerous process in one of the bones of the lower spine" as the cause of the back ailment.

Appointments By Presidents

Following is the number of Supreme Court Justices and Chief Justices each President has appointed:

President	1st Term	2d Term	3d Term
Washington	7*	4†	
Adams	3*		
Jefferson	1	2	
Madison	2		
Monroe		1	
Adams	1		
Jackson	2	4*	
Van Buren	2		
Tyler	1		
Polk	2		
Fillmore	1		
Pierce	1		
Buchanan	1		
Lincoln	5*		
Grant	3	1*	
Hayes	2		
Garfield	1		
Arthur	2		
Cleveland	2*		
Harrison	4		
Cleveland	2		
McKinley	1		
T. Roosevelt	2	1	
Taft	6*		
Wilson	3		
Harding	4*		
Coolidge	1		
Hoover	3*		
F. Roosevelt		5	3‡
Truman	2*	2	
Eisenhower	3*	2	
Kennedy	2		
Johnson	2		
Nixon	2*		

* Including Chief Justice.

† Including 2 Chief Justices.

‡ Including elevation of Justice Harlan F. Stone to Chief Justice.

ciation, and Vice President Agnew.

Among those prominently mentioned, only Mr. Poff, at 47 years of age, is under 50. Mr. Agnew is 52, Mr. Rhyne is 59 and Mr. Powell is 64.

Mr. Ziegler said today that the list of seven possible nominees would probably be expanded. He was criticized last week by advocates of equal rights for women for having stated that the President was seeking "the most qualified man available."

Mr. Ziegler said today that the President was prepared to consider the most qualified "persons," which some observers regarded as an attempt to avoid similar criticism but which others viewed as support for the speculation that a woman might be nominated. Mrs. Nixon said yesterday that she had urged the President to select a woman to replace Justice Black.

One woman mentioned as a possibility was Mary Gardiner Jones, a Nixon appointee to the Federal Trade Commission.

Rogers and Rockefeller

There also was a school of thought within the White House that the second vacancy gave Mr. Nixon the opportunity to nominate Secretary of State William P. Rogers to the Court. One official said this would pave the way for Mr. Nixon to name Governor Rockefeller of New York to become Secretary of State.

The chance of appointing two Associate Justices at the same time has not occurred since 1941. Mr. Nixon will be the fifth President in this century to do so. He will be only the eighth President in history, however, able to appoint four or more Justices during a single term.

Mr. Nixon faces the pressure of conflicting traditions regarding Supreme Court nominees. There is not presently, as has generally been the case, a Justice with a Jewish background. It has also become customary to have a Justice from the New York legal profession, where Mr. Harlan began his career, and from the South, as was Mr. Black.

Senator James O. Eastland, Democrat of Mississippi, whose Judiciary Committee will consider the nominations, reminded the President in a statement issued this morning that Mr. Nixon had pledged to name a Southerner to the Court despite defeats in two previous attempts.

Haynsworth and Carswell

The Senate, in long and bitter disputes, rejected his nomination of Judges Clement F. Haynsworth Jr. and G. Harold Carswell.

Thus, Representative Poff, with 10 terms in the House and long service on its Judiciary Committee, is regarded as a Southern nominee unlikely to face rejection.

A coalition of civil rights leaders, joined today by Leon Shull, national director of Americans for Democratic Action, was already preparing to oppose Mr. Poff. But two leading liberals on the House Judiciary Committee, Emanuel Celler of Brooklyn, the chairman, and William M. McCulloch of Ohio, the ranking Republican, sent Mr. Nixon a telegram last night expressing support of Mr. Poff.

The Supreme Court is scheduled to begin its fall term on Oct. 4. The process of selection and confirmation of two nominees is not considered likely to be completed in time for either vacancy to be filled before then.