

JOHNSON APPOINTS FORTAS TO HEAD SUPREME COURT; THORNBERRY TO BE JUSTICE



Justice Abe Fortas in a recent picture



Judge Homer Thornberry in Texas yesterday

Associated Press

nominated Judge Homer Thornberry, a former Texas Congressman who is now a member of the United States Court of Appeals for the Fifth Circuit. If confirmed by the Senate, Justice Fortas will become the first Jewish Chief Justice at the 14th man to occupy the nation's highest judicial office. He, like Judge Thornberry, is an old and close personal friend of Mr. Johnson's.

Opposition to both nominations was immediate. Eighteen of the 36 Republicans in the Senate had vowed by nightfall that they would oppose the "lame duck" President's action, perhaps by a filibuster, and there were strong indications that several others might join forces with them.

Approved by Leadership

However, when the President announced the nominations this morning at an informal White House news conference, he said that he had conferred in advance with leaders of both parties in the Senate and that he thought the nominations would be confirmed.

Initial reactions in the Senate indicated that the leadership was pleased with the nominations, which pair a judicial liberal, Justice Fortas, with a Southern moderate, Judge Thornberry.

Everett McKinley Dirksen, the Senate minority leader, praised Justice Fortas as "a very able lawyer" with a "sound" philosophy and called Judge Thornberry a "very solid citizen." The Senate majority leader, Mike Mansfield, agreed that the nominations were certain to be approved.

The nominations combine two characteristics of men during Mr. Johnson's Presidency—a tendency to make appointments that are historic first

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and one to place close personal associates in high office.

Before this morning's news conference, President Johnson had not commented on the widespread reports that Chief Justice Warren had submitted his resignation.

'Solely Because of Age'

The President read the Chief Justice's letter, which he said he received June 13. The letter explained that the 77-year-old Justice planned to retire "solely because of age."

OPPOSITION VOICES

Some G.O.P. Senator to Fight Confirmation — Dirksen For It

Warren-Johnson exchange of letters is on Page 34.

By FRED P. GRAHAM
Special to The New York Times

WASHINGTON, June 26 — President Johnson nominated Associate Justice Abe Fortas today to succeed Earl Warren as Chief Justice of the United States.

To fill Justice Fortas's seat on the Court the President

"I have enjoyed each day of the fifteen years I have been here," Chief Justice Warren wrote.

But he noted that when he entered public life more than a half-century ago, 150 million of the 200 million living Americans had not yet been born. He said a younger man should now take over.

President Johnson released a letter from him to the Chief Justice, in which he praised the "exceptional distinction" of Mr. Warren's service. Mr. Johnson said he would accept the resignation, effective when the new Chief Justice was sworn in.

Justice Fortas, who was 58 years old on June 19, has been a close friend of Mr. Johnson for three decades. He has served as Mr. Johnson's personal lawyer and has advised the President on a wide range of affairs, both before and after Mr. Fortas became a justice.

In the three years since Mr. Johnson appointed him to the Court, Justice Fortas has frequently lined up with Chief Justice Warren and other liberal justices.

When word of Chief Justice Warren's resignation recently leaked into print, there were reports that he was concerned

that Richard M. Nixon might be elected President and that he wished to step down now so that Mr. Johnson could appoint a liberal to take his place.

Judge Thornberry, 59, has received three Federal judicial appointments from President Johnson, moving from the lowest level of the Federal judicial hierarchy to the highest.

Prior to his first judgeship, Mr. Thornberry served for 15 years in the Congressional seat that Mr. Johnson vacated when he was elected to the Senate in 1948.

President Johnson appointed him to the Federal District Court for the Western District of Texas in December, 1963, and elevated him to the court of appeals in July, 1965.

On the fifth circuit, Judge Thornberry has generally voted on desegregation issues with the majority, which has the most liberal record on racial questions of any appeals court. He has occasionally been reversed by the Supreme Court on the ground that he had gone too far.

Judge Thornberry said today in Austin, Tex., that Mr. Johnson telephoned him this morning to say that he was nominating him for the Supreme Court.

"Homer, I'm sending in your name," Mr. Johnson said.

Judge Thornberry said: "I was just overwhelmed."

Hearings before the Senate Judiciary Committee are not expected to begin until after the long July 4 weekend. Congress is aiming for adjournment by Sept. 1.

Although Justice Fortas is already a member of the Supreme Court, the office of Chief Justice is a distant office, mentioned separately in the Constitution, and he must be confirmed again.

He presumably will retain his post as Associate Justice until the Senate acts. As Chief Justice he would receive an annual salary of \$40,000,—a \$500 raise from his present compensation—and would be given the use of the Supreme Court's only chauffeured limousine.

Despite these perquisites, the

Chief Justice exercises the same vote as the other Justices and is said to be "first among equals."

Although there is an effort among some Republicans to block Mr. Johnson's "lame duck" appointments, the trend has been against such efforts. Only one nominee in this century, John J. Paker in 1930, has failed to be confirmed.

Both Held Qualified

Albert E. Jenner of Chicago, chairman of the American Bar Association Committee on the Federal Judiciary, said that the 12-member panel had conferred on a conference telephone call early this morning and unanimously found both men qualified.

The Government traditionally asks the bar committee to rate prospective judicial nominees for the lower Federal judiciary, and avoids appointing persons who are deemed unqualified.

The hurried polling of the committee on Supreme Court appointments has also become a recent tradition but is considered no more than a formality.

Chief Justice Warren was in San Francisco today. In a statement issued through his office here, he praised Justice Fortas as a scholar, an administrator and "a great lawyer, and I know he will be a great Chief Justice."

He also commended Judge Thornberry for his record in Congress and on the bench. "I feel confident he will serve well in the Justiceship vacated by Mr. Justice Fortas," he said.