

LBJ's Favorite Lawyer

ABE FORTAS

By Laura Kalman
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By E. Barrett Prettyman Jr.

THE READER begins the first chapter of *Abe Fortas* with some skepticism, having already learned from the acknowledgments that his widow facilitated the writing in every way and encouraged friends to talk to the author, that Fortas's sister provided help with the book, and that his former law partners gave the author access to nonprivileged papers.

Is this to be, then, another paean, a quick brush stroke over awkward aspects of the man's life?

The skepticism is quickly dispelled—with a vengeance. Fortas's family and friends will be appalled by the picture of him painted here.

According to the author, Laura Kalman, Fortas was considered a "monster" by a co-worker on the Yale Law Journal: "he was no longer well liked" during a second stint at the Interior Department; he "lacked an inner compunction to treat people with civility"; some of his suggestions were regarded by the State Department as "naive, impractical, and illegal"; and his financial arrange-

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ment with Louis Wolfson "reflected insensitivity and arrogance." Repeatedly, Kalman states that Fortas deliberately lied to the Senate Judiciary Committee in 1968. And he is variously described as self-absorbed, aloof, bossy, devious, evasive, manipulative, and—almost a compliment amidst this sea of putdowns—"not a very lovable person."

To be sure, another side of Fortas appears. He was genuinely committed to civil liberties both before and after it was fashionable, and he was largely responsible for the admirable legal help that his law firm, Arnold, Fortas and Porter, provided to those accused of communist connections during the dark days of McCarthyism. Clients loved him, and he gave unstintingly of himself on their behalfs. He formed a lifelong allegiance to Puerto Rico and tried to upgrade that country's government and economy. An able musician himself, he was transported by music all his life. One justice (albeit his close friend, William O. Douglas) thought that Fortas's argument in *Gideon v. Wainwright* was the best he had ever heard. And the team of Fortas and Clark Clifford was responsible for the sensitive handling of the Walter Jenkins tragedy.

Nevertheless, the overall portrait of Fortas that emerges is disquieting, to say the least. While on the Supreme Court, he regularly participated in meetings of President Johnson's closest advisers, argued against a Vietnam bombing pause and later urged a resumption of bombing, made extensive revisions in a State of the Union Address, negotiated between the White House and the



ABE FORTAS IN 1982
BY HARRY NATHANSON—THE WASHINGTON POST

Dominican Republic, reviewed intelligence reports, interviewed persons for executive and judicial positions, met with a White House team to avert a rail strike, condemned the District of Columbia Crime Bill as an "obscenty" and helped draft the president's message vetoing it, and advised the White House on campaign financing. Fortas, according to the author, even spoke with the FBI and the president about matters pending before the Court.

Kalman does not gloss over these impro-

prieties. She correctly concludes that while other justices have given largely unsolicited advice to presidents, Fortas's behavior far exceeded previous bounds.

His early background provided few forewarnings of this behavior. His father was Russian and his mother Lithuanian. They came to the United States in their early thirties, where they lived a reasonably comfortable life running several businesses. Abe was born in a modest part of Memphis. He never played much as a child; instead, he worked at odd jobs and gave violin lessons. He won a scholarship to Southwestern College, where he was on the debating team and excelled at writing.

On a scholarship to Yale Law School, he quickly distinguished himself and became the editor of the law journal. His mentors, who played significant roles in his later life, were Thurman Arnold and later justice Douglas. After law school, Fortas undertook a teaching fellowship at Yale but for five years committed to Washington, where he served in several government departments. He moved to Washington fulltime in 1938. Fortas's service in the Navy in 1944 lasted only one month, and he returned to the Interior Department. However, his relationship with rascable Secretary Harold Ickes deteriorated, and when his old friend Thurman Arnold left the Court of Appeals, the firm of Arnold and Fortas was born, soon to be joined by Paul Porter. The firm quickly became involved in fighting loyalty board decisions but also represented well-paying clients who loved to listen to Arnold's stories and then turned to Fortas for tough tactics and judgment. Considered a "conservative strategist," he argued seven cases before the Supreme

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forms and compromises, convinced that for anything to change everything had to change. The revolution "was the result not of insufferable conditions but of irreconcilable attitudes." Pipes faults Russia's radicals for their intransigence and wishes they had been "more mature—more patient, that is, and

the DOBINSKY, 1940, and the against Lenin's orders, citing these occasions as proof that the party was not authoritarian. One might just as well study an army platoon, prove that it sometimes ignores its commander's orders and deduce that the army is a democratic institution after all. Pipes shows con-

sufficient killing would prove the seriousness of their intent to create a new world. Lenin's "attorney general" Nikolai Krylenko enthused: "We must execute not only the guilty. Execution of the innocent will impress the masses even more." Grigory Zinoviev spoke

Court. His influence at Arnold, Fortas and Porter was enormous, since by the 1960s he was bringing in three-quarters of the firm's work.

In 1955, Fortas married an able tax attorney, Carol Agger. According to Kalman, this was primarily a union of minds. The couple had no children, and over the years Fortas pursued affairs with other women—even with his wife's friends.

IN THE 1940s Fortas had met Lyndon Johnson, who would contribute to both his further rise and eventual fall. Johnson, of course, was forever in Fortas's debt for persuading Justice Hugo Black to stay a lower-court order, effectively letting Johnson win a 1948 Senate election (an irony here, since Black and Fortas later became enemies on the Supreme Court). But more than that, Johnson liked and trusted Fortas.

After Johnson became president, Fortas turned down his offer of the attorney generalship but, after first refusing, accepted a position on the Supreme Court. Contrary to popular belief, Fortas, according to Kalman, very much wanted the job.

The news, however, shocked and angered Mrs. Fortas, who hung up on Johnson.

Fortas was not on the Court long enough to make a lasting contribution, although he did write several important opinions. He was result-oriented as a justice, aligning himself with most minorities, voting both for and against business interests, but siding with the government on anything that could be viewed as critical of the Vietnam War.

According to the author, Fortas retained two clients when he went on the bench: 90-year-old Fabio Casals and President Johnson. Finally, when Johnson tried to make him chief justice to replace Earl Warren, Fortas was brought under withering congressional scrutiny. Not only had he been actively advising the president, but he had secured a lifelong sinecure from the Wolfson Foundation and income from a lecture series at American University paid for by former clients. Fortas resigned from the Court, and the firm he had helped found would not take him back. The reader comes to this book

seeking an answer to the question, How could someone so bright be so blinded by the conflicting demands of the Supreme Court, the White House and private benefactors?

Kalman provides as good an answer as one is likely to get, and it is complex. While Fortas himself was not overly enamored of huge amounts of money, his wife apparently was, and they were both charmed by the financial strictures grinded by the financial strutures placed upon judges. Moreover, the Supreme Court was not as fulfilling a job as Fortas had hoped. Most important, he loved power and simply was not able to give it up because of a transfer in positions.

The reader has no way of knowing whether Kalman is fair and accurate. She relies, for example, on over 40 confidential interviews, making some of her conclusions difficult to assess. But she at least seems to have diligently plowed every field in an effort to capture the essence of this variegated man. Kalman chose a subject with so many self-inflicted wounds that the feeling she engenders is not sympathy but wonder. Yet few will read her book without sadness.

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