

Fortas of the Supreme Court: a question of ethics

The Justice . . . and



Associate Justice Abe Fortas: Why would a man of his legal brilliance and high position do business with . . .

the Stock Manipulator

by **WILLIAM
LAMBERT**

On Tuesday, April 1, the Supreme Court of the United States shut the door on an appeal by financial manipulator Louis Wolfson and his longtime associate, Elkin "Buddy" Gerbert. It was very nearly the last hope of the two men to set aside the first of two convictions for violating U.S. securities laws. In the announcement of denial of the writ, one of the Justices, Abe Fortas, was noted as "recused," a lawyer's expression meaning he declined to take part in the decision.

On the surface, the recusal seemed usual and proper, for it was widely known that the Justice's former law firm—Arnold, Fortas & Porter—had represented a Wolfson company, New York Shipbuilding Corp., while Fortas was a member of the firm. Moreover, after Fortas had ascended to the bench and his name had been scraped off the law firm's door, Arnold & Porter had represented Gerbert in his two criminal trials with Wolfson. Actually, quite apart from the actions of his former firm, Justice Fortas had reason to abstain from judging Louis Wolfson.

In an investigation over a period of several months, LIFE found evidence of a personal association between the Justice and Wolfson that took place after Fortas was seated as a member of the nation's highest tribunal.

The basic facts are simple: While a member of the High Court, Fortas was paid \$20,000 by the Wolfson Family Foundation, a tax-free charitable foundation set up by Wolfson and his brothers. Ostensibly, Justice Fortas was being paid to advise the foundation on ways to use its funds for charitable, educational and civil rights projects. Whatever services he may or may not have rendered in this respect, Justice Fortas' name was being dropped in strategic places by Wolfson and Gerbert in their effort to stay out of prison on the securities charge. That this was done without his knowledge does not change the fact that his acceptance of the money, and other actions, made the name-dropping effective.

Justice Fortas ultimately refunded the money to the foundation—but not until nearly a year after



... Louis Wolfson, a well-known corporate stock manipulator known to be under federal investigation?

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A \$20,000 check banked in Fortas' private

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receiving it. By that time Wolfson and Gerbert had been twice indicted on federal criminal charges.

Wolfson is no stranger to litigation. He began his rise in financial circles in the 1930s when he took over the family junk business his immigrant father had built. By the early '50s his tall, lean figure and ruggedly handsome face, which shows some marks of youthful experience as a professional

boxer, was a familiar sight at various corporate board meetings and on the newspaper financial pages. He took over the Washington, D.C. transit company and siphoned off its rich capital reserves. He nearly succeeded in gaining control of Montgomery Ward, but was narrowly beaten in a proxy battle. At one time he was the largest shareholder in American Motors, and when he sold out his position, he got embroiled in a dispute with

the government over making "false and misleading statements." A prominent financial writer called him "the biggest corporate raider of all time."

On his part, Fortas was a well known figure in legal circles—and a high-powered political operator as well—long before he was appointed to the Court. As a leading partner in one of Washington's most prestigious law firms before his elevation to the bench, he is widely considered to be more than comfortably rich. He is acknowledged a brilliant legal scholar and also a violin virtuoso and a connoisseur collector of art and antiques.

From Lyndon Johnson's days as a congressman through his term as President of the United States, Fortas was counsel and close confidant. In 1964, when Johnson aide Walter Jenkins ran afoul of the law, it was Fortas (along with Clark Clifford) who tried to get the newspapers to suppress the story. If a person had to see the President, Fortas was the man who could arrange it. If the President wished to fend off influential tormentors—including the press—Fortas frequently was dispatched to do the fending.

Fortas continued to advise and do favors for President Johnson after he took his seat on the Supreme Court in October, 1965. That extrajudicial activity finally got him in trouble and cost him the job of Chief Justice.

When Johnson nominated him to succeed Earl Warren last June 26, 1968, Fortas had to face a not altogether friendly Senate Judicial

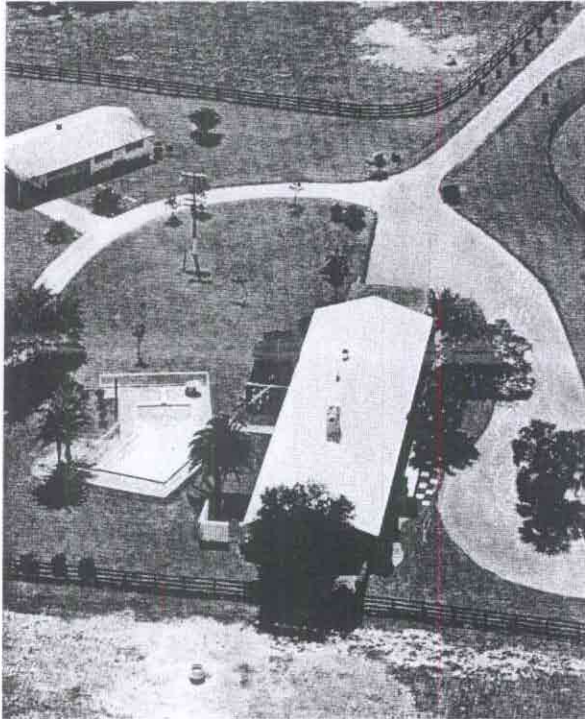
Committee. Some Republicans wished to hold the job open for a possible Republican appointment; conservative senators attacked Fortas for his liberal positions on criminal law and censorship. But there were also considerations which seemed germane to his judicial fitness.

His cronyism with the President bore on the doctrine of separation of powers among the branches of government. There were accusations that Justice Fortas had been functioning as a conduit for presidential wrath against friends who opposed his policies; that Fortas had tried to arrange appointments to the State Department and the federal bench; that he had functioned as a presidential consultant on various problems and position papers. He irked some senators by declining to comment on certain aspects of these matters.

The issue of his appointment approached a climax when a newspaper revealed that Fortas had accepted \$15,000 for lecturing at American University's Washington College of Law. Such compensation (though overlarge) was not in itself criticized; but when it developed that Fortas' former law partner, Paul Porter, had solicited funds for the lectures from five of his or Fortas' influential friends, consternation prevailed even among Fortas supporters. One contributor was Troy Post, a wealthy Texan and Fortas friend whose son had been helped by Porter after an indictment for mail fraud. Another was Maurice Lazarus, who at one time sat with Fortas on the board of Federated Department Stores. Others were investment bankers Gustave Levy and John Loeb and New York lawyer Paul Davis Smith.

Critical senators were eager to press questioning about the fund and other matters. But on Sept. 13, in a letter to the chairman, Fortas declined to appear again before the committee; and on Oct. 2, 1968, at Fortas' request, President Johnson withdrew his nomination.

Fortas' personal association with corporate tycoon Wolfson appears to have begun about four years ago. Wolfson himself recalls that Milton Freeman, a partner in Arnold, Fortas & Porter and a highly skilled securities lawyer, was active in his behalf as early as December 1964 in regard to his growing difficulties with the Securities and Exchange Commission. Fortas himself says that apart from the firm's representation of one of Wolfson's companies since May or



Aerial view of main ranch house, pool and guest house at Wolfson's expansive Harbor View horse ranch near Ocala, Fla., where Fortas was a guest in June 1966. He was met at the airport by Wolfson partner Buddy Gerbert (right), who later, according to Wolfson associate Alexander Rittmaster (far right), said that the Justice was there to "take care of" the SEC matter.



account

June, 1965, his "only association" with Mr. Wolfson had to do with conversations beginning when I first met him in 1965, in which he told me of the program of the Wolfson Family Foundation. . . ."

This statement is contained in a letter to LIFE written in response to a request for a meeting where he would be given an opportunity to explain any information in LIFE's possession that might be construed in any way as an impropriety on his part. The request was turned down. "Since there has been no impropriety, or anything approaching it, in my conduct, no purpose would be served by any such meeting," Fortas wrote.

It is not easy to pin down the exact extent of the Wolfson-Fortas relationship, nor has LIFE uncovered evidence making possible a charge that Wolfson hired Fortas to fix his case. But the conflicting accounts of participants (some of whom refuse to tell all or anything), coupled with the findings of LIFE's independent investigation, yield certain facts.

► On Jan. 3, 1966, three months after Fortas was sworn in as Associate Justice, a check for \$20,000 was drawn to him personally on a Jacksonville, Fla. bank account of the Wolfson Family Foundation, and signed by Gerbert as foundation treasurer. It was endorsed with the Justice's name and deposited in his personal—not his old law firm's—bank account.

► In February, Alexander Rittmaster, a Wolfson business associate who later was to be indicted with him, asked Wolfson what he was doing about the Securities and Exchange Commission's investigation, then at least 15 months in progress. Rittmaster said Wolfson told him it was going to be taken care of "at the top," and that the matter wouldn't get out of Washington. He also said that Fortas was joining the foundation.

► On March 14, the SEC forwarded a report to the Justice Department in Washington and to U.S. Attorney Robert Morgenthau in New York. The report, highly classified, recommended criminal prosecution of Wolfson and Gerbert. The charge was that they conspired to unload secretly their control shares in the Wolfson-dominated Continental Enterprises, Inc., by failing to publicly register their projected stock sales. (The SEC investigation showed they realized \$3.5 million from the sale, after which the remaining stockholders found their shares had dropped from \$8 to \$1.50).

► On June 10, the SEC forwarded to Morgenthau's office another re-



Former law partner Paul Porter (left) told LIFE that Fortas (below) with old friend Lyndon Johnson) refunded Wolfson's \$20,000 because of overload of Court work.



port, also classified, recommending prosecution of Wolfson, Gerbert, Rittmaster and two other Wolfson associates, Joseph Kosow, a Boston financier, and Marshal Staub, president of the Wolfson-controlled Merritt-Chapman & Scott Corp. The charges: buying secretly, in violation of securities laws, \$10 million in Merritt-Chapman stock and selling it back to the company for a \$4 million profit.

This was a particularly trying period for Wolfson. Government lawyers believe he learned almost immediately that the criminal reference reports had been forwarded to the Justice Department. He had clearly not expected this development. (Later, in support of a defense motion, Dr. Harold Rand of Miami indicated that those troubles had aggravated Wolfson's heart condition: "In June, 1966, Mr. Wolfson had several bouts of severe substernal pain and heaviness on his chest after prolonged long-distance calls of distressing news from meetings.")

► On June 14, the day after the Supreme Court had gone into a week's recess, Justice Fortas flew to Jacksonville. Gerbert met him at the airport and drove out to Wolfson's elegant Harbor View Farm near Ocala, where Wolfson runs one of the largest Thoroughbred horse-breeding spreads in the country.

► On June 15, while Fortas was a house guest at Harbor View, the SEC's long-feared investigation finally came to public attention. An SEC attorney indicated what was up when he asked a New York State judge to hold up settlement of several stockholders' suits against Merritt-Chapman directors pending results of the SEC study.

► The next day Fortas returned to Washington.

► Later that month (the exact date is in question), Wolfson told Ritt-

master—according to Rittmaster—that Fortas was "furious" because the SEC had reneged on a pledge to give the Wolfson group another hearing before forwarding a criminal reference report. Rittmaster said he was further reassured by Gerbert that there was no need to worry, that Fortas had been at the horse farm to discuss the SEC matter and that it was to be taken care of.

► On July 18, Wolfson wrote a long letter to Manuel Cohen, SEC chairman, complaining, among other things, that "I had understood from my counsel that before the investigation was concluded responsible officials of the SEC would give us a chance to fully explain the results of the investigation." He asked that the criminal reference report be recalled to Washington, and that his associates and counsel be given a chance to appear.

► On Aug. 16, 1966, a federal grand jury in Manhattan began to take testimony in its investigation.

► On Aug. 19, when Wolfson was under oath before the grand jury, Assistant U.S. Attorney Michael Armstrong recalled the letter to Cohen, and offered Wolfson an opportunity to be heard. Now, Wolfson took the Fifth Amendment.

► On Sept. 8, before the same grand jury, Prosecutor Armstrong asked Merritt-Chapman President Staub this question: "Have you had any discussions with anybody

relating to this grand jury investigation and to the effect that the investigation was going to come to a halt as a result of influence used in Washington?"—at which point Staub took the Fifth, and Armstrong lectured him that Washington influence would have no effect on the grand jury's deliberations. (Later, in arguing before the U.S. Circuit Court of Appeals against a defense contention that Armstrong's question was improper, Assistant U.S. Attorney Charles P. Sifton queried, "And I would ask where else such a warning can be given, where the government has reason to believe—as it had in this case—that pressure was being brought?")

► On Sept. 19, Wolfson and Gerbert were indicted in the Continental Enterprises case.

► On Oct. 18, Wolfson, Gerbert, Kosow, Rittmaster and Staub were indicted in the Merritt-Chapman & Scott case on charges of conspiring to obstruct the SEC investigation. Wolfson and Gerbert were also indicted for perjury.

► On Dec. 22, Fortas drew a personal check for \$20,000 on his own bank account, payable to the Wolfson Family Foundation, thus paying back the money he had received from the Wolfson foundation more than 11 months earlier.

Attorney Paul Porter, as Fortas' spokesman, told LIFE that the \$20,000 was paid to Justice Fortas after Wolfson asked Fortas to help

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From The Canons of Judicial Ethics

American Bar Association

CANON 4: A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

CANON 24: A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

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trustees of the foundation outline future charitable and scholarship programs for the fund. Porter affirmed that the money was paid to Fortas personally, not the law firm; that he—Porter—understood "a secretary" put it in Fortas' bank account, and that it was later refunded by the Justice "because Abe had a whole sackful of petitions for writs; the business of the Court took so much of his time he couldn't do the work for the foundation."

Fortas' interest in the foundation, Porter said, stemmed from his long-time involvement in charitable activities and his interest in education—the foundation had a program for granting scholarships for theological studies. He said Fortas made two trips to Florida to meet with foundation trustees, one before he went on the bench and the other after he became Associate Justice.

Mrs. Fortas—Carolyn Agger, as she is known in her role as tax attorney and partner in Arnold & Fortas—gave an account to a government agent which corroborated Porter's account in most respects, but in addition suggested that her husband's role was that of advising the trustees on possible civil rights projects.

The question arises: Aside from legal advice, what manner of counseling service could Fortas perform for the foundation that would justify a \$20,000 fee? In the light of other recorded foundation expenditures, the amount seems generous in the extreme.

In its 1966 fiscal year, the foundation's gross income from capital investment was \$115,200. Its outlay for expenses was \$9,300 and included taxes, interest and \$415 in miscellaneous costs. Its total grants

for charity, scholarships and gifts came to \$77,680. A \$20,000 item—apparently the Fortas fee—was identified as "exchange" and was listed on the foundation's federal tax information return as an asset. One accountant said it appeared to be a prepayment for service expected to be rendered. The item disappears on the 1967 return, which would indicate Fortas' repayment.

In his letter to LIFE, Fortas fails to mention the payment at all, nor does he concede discussing foundation matters in any way with Wolfson. He says only that he was "told" by Wolfson of the foundation's works and admits being present at Wolfson's horse farm near Ocala, Fla. in June 1966, while others discussed the charitable programs.

The letter stated: "Mr. Porter, of Arnold & Porter, has told me you are interested in obtaining a chronology, and I am glad to send you the following information: The firm with which I was associated before I became a Justice of this Court was retained by one of Mr. Wolfson's companies in May or June 1965, as I remember. I was nominated as an Associate Justice of the Supreme Court in July of 1965, and took office in October. I began reducing my activities in the firm after the nomination, pending actually taking office, and most of the work on the account was done by others in the firm. If you are interested in more information on this subject, Mr. Porter has access to the facts and can presumably answer any questions concerning this that may be appropriate. I understand he has offered to do so.

"Apart from this, my only 'association' with Mr. Wolfson had to do with conversations beginning

when I first met him in 1965, in which he told me of the program of the Wolfson Family Foundation in Jacksonville to promote racial and religious understanding and co-existence and to provide financial assistance, on a nondenominational basis, to candidates for the clergy.

"In June of 1966," the Fortas letter to LIFE continues, "I had the pleasure of a brief visit to Mr. Wolfson's famous horse farm, and during that trip to Florida I was present at a meeting of the Wolfson Family Foundation during which some of those present described some of its programs and, as I recall, discussed some of the pending scholarship applications. I did not, of course, participate in any of Mr. Wolfson's business or legal affairs during that visit, nor have I done so at any time since I retired from law practice. In fact, my recollection is that Mr. Wolfson himself was not present at the meeting of the Family Foundation."

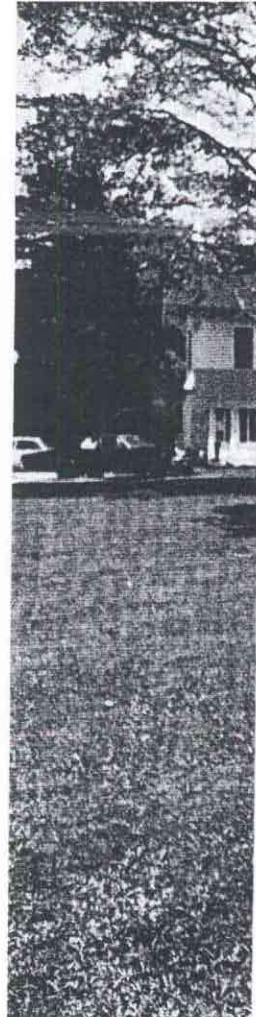
Wolfson's reputation and his troubles with the SEC were well known in financial and legal circles. Fortas' questionable association with such a man was rendered even more serious by the fact that money passed between them. And if Rittmaster is to be believed—that Wolfson and Gerbert were using Fortas' name to calm their troubled co-conspirators and keep them from cooperating with government prosecutors—the relationship had far more serious implications. Rittmaster's story was unfolded to the government in August 1966. (Later, he was to testify for the government in the Continental Enterprises case.)

Rittmaster told government investigators of pressures supposedly brought by Wolfson to stop the criminal proceedings, and Fortas' name quickly arose. Rittmaster said Gerbert had told him that he—Gerbert—had picked up Fortas at the airport and driven him to the Wolfson farm, and that Fortas had discussed the SEC problem. Fortas himself had made Rittmaster's claim credible—he was in Ocala. Assistant U.S. Attorney Armstrong, obviously skeptical, dispatched the chief investigator in the Wolfson cases, SEC financial analyst Stuart Allen, to Florida, ostensibly to interview other prospective witnesses. Allen affirmed that the Justice had made the trip from Miami to

Jacksonville on the date in question. He found a round-trip ticket to Jacksonville in Fortas' name in the files of Eastern Air Lines in Miami.

Other aspects of Rittmaster's story were also checked. The government attorneys finally concluded he was telling the truth.

Then they began to worry: there was, on the basis of Rittmaster's account, an outside possibility that Fortas himself might appear as a witness and testify that while in private practice he might have suggested to Wolfson that the financier had no legal problem in his handling of Continental Enterprises stock. Wolfson's defense, in essence, was ignorance of the law. If he could plead that he acted improperly with *advice of counsel*,



Carolyn Agger Fortas (shown with the Justice at their Connecticut summer home) suggested he took the Wolfson Foundation's check for advice on civil rights projects.

and if a Supreme Court Justice then backed him up, the government's case might go down the drain. It is a measure of how seriously government prosecutors regarded the Wolfson-Fortas relationship that they viewed this as a serious contingency, and were prepared, if necessary, to cross-examine Justice Fortas.

The government still had to get the Merritt-Chapman case to trial, and here again there is no doubt that Fortas was regarded as a possible factor in the defense.

When that case came to trial nine months later, with Assistant U.S. Attorney Paul Grand heading the prosecution, Rittmaster walked into the courtroom and pleaded guilty, and the court was told that he would be a witness for the gov-

ernment against Wolfson and Gerbert. The jury apparently believed Rittmaster's testimony—an important consideration in weighing the credibility of his accounts of the Wolfson-Gerbert uses of Fortas' name—and voted conviction. (Without Rittmaster's testimony, the prosecution later conceded, the government would have lost its case.)

When Wolfson appeared for sentencing in the Merritt-Chapman case, Prosecutor Grand recalled to the court Rittmaster's testimony that Wolfson had said "if he had to he would go as far as Capitol Hill to see that nothing happened, and that at most these people would receive only a slap on the wrist."

Grand told the judge: "Mr. Wolf-

son, as the evidence indicates, stood ready to use what power and what influence he had, even beyond his own perjury, to prevent the investigation from proceeding."

It remained for Wolfson himself to have the last word. In an interview with a *Wall Street Journal* reporter, just days before he went to prison, the embattled industrialist said that through political connections he could have gotten a pardon from President Johnson last December if he had asked for it. He told the reporter he received that assurance "from somebody who is as close as anybody could be" to Mr. Johnson.

But, said Wolfson, he turned down the offer. He didn't want any favors. ◀

