

Liberal Nominees for Supreme Court Posts

Abe Fortas

William Homer Thornberry

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WASHINGTON, June 26— Abe Fortas, who was nominated today to succeed Chief Justice Earl Warren as the nation's highest judicial officer, is very much like Mr. Warren in outlook and almost totally unlike him in personality. During Mr. Fortas's three years on the Court the two men have usually been on the same liberal side of the issues, and a "Fortas Court" would be expected to be much like the "Warren Court"—liberal, venturesome and creative.

But while Mr. Warren is an amiable, grandfatherly type whose idealism seems almost naive, Mr. Fortas is a tough, sophisticated advocate who has built a solid reputation as a good Justice by hard work and intelligence. In the process he has rubbed a few Justices the wrong way.

"Abe Fortas has all the qualities of a good Associate Justice — scholarship, commitment and a feeling for the times," a Washington lawyer said. "But the great Chief Justices have also been healers."

Persuasive Dissent

An example of Justice Fortas's judicial prowess came a week ago Monday, the last day of the current Supreme Court term.

He wrote a persuasive dissent in a 5-to-4 decision saying that to punish chronic alcoholics for being drunk in public was "cruel and unusual" punishment and therefore unconstitutional under the Eighth Amendment. Many informed lawyers predicted that this minority view would eventually become the law.

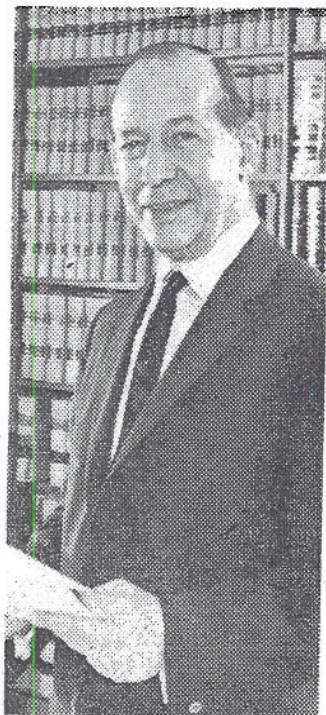
Justice Byron R. White, while agreeing with the conclusion of the majority, wrote a concurring opinion sympathetic to the Fortas view, thus preserving the prospect of changes another day.

If the challenge to Mr. Fortas is to moderate the stern qualities that brought him success as a lawyer and Associate Justice, and to develop a Chief Justice's vital trait—the ability to "marshal the Court," his past history would suggest that this will be smoothly and efficiently done.

Mr. Fortas was born on June 19, 1910, the last of five children of a Jewish cabinet-maker who had immigrated to Memphis early in this century. By the time he was 13 years old he had begun earning money by playing the violin at social events.

New Deal Posts

After being graduated from Southwestern College in



The New York Times

On the bench, he asks the right questions.

Fortas has since tended to be at Mr. Johnson's side when important events required a trusted friend and confidant.

One of these occasions, in 1948, proved to be a turning point in Mr. Johnson's career. Mr. Johnson had come out 87 votes ahead in the Democratic Senatorial primary, but his opponent had won a court order to keep Mr. Johnson's name off the ballot for the general election.

Mr. Fortas took the matter to Justice Hugo L. Black and obtained a reversal of the order. Mr. Johnson won the election, and Mr. Fortas, the lifelong appreciation of a future President.

Mr. Johnson has continued to call upon Mr. Fortas, for advice, legal and otherwise.

On the bench, Mr. Fortas invariably seems well-prepared, and he has a knack for asking the questions that reveal the pivotal issues in a case. He is said to be persuasive in presenting his views when the justices discuss cases in private before voting.

His most important opinions have been in the area of juvenile law, where he has insisted that youngsters be given many of the constitutional protections that adults must be granted in court.

Mrs. Fortas is a leading tax lawyer and remains a

NOT long ago, Federal Judge William Homer Thornberry, looking back on his experience in the House of Representatives, said that his most agonizing moments were in voting against bills that his friends had asked him to support and backing measures that his friends had opposed. "Finally," he said, "you make up your mind and do what you think is right as well as what is right for your constituents."

The 59-year-old member of the United States Court of Appeals for the Fifth Circuit, who was nominated yesterday by President Johnson to the Supreme Court, has long indicated his independence and his beliefs.

His decisions as a district judge, to which he was named in 1963 by President Kennedy, and as a member of the Appeals Court, a Johnson appointment in 1965, have stressed his liberalism on civil rights, desegregation and freedom of speech.

'Blunt-Spoken' Advocate

A friend in Austin, Tex., where Judge Thornberry lives, who has known this stocky, gray-haired legislator and jurist for years, describes him as follows:

"He is blunt-spoken. He does not make a big fuss about what he believes, but he makes pretty clear what he means."

For example, more than 20 years ago, a community bordering on Austin wanted to become part of the city.

Men
in the
News

Quietly, Mr. Thornberry, then a member of the City Council, learned that the area did not allow Jews. He said nothing until the community applied for inclusion in the city.

Then, without mincing words, he began a fight against the community unless it changed its charter to allow the sale of lots to Jews. His aggressive campaign blocked admission of the community, which refused to change its charter and is still not part of the city.

In recent years Judge Thornberry has argued off and on the bench for equal rights for Negroes.

During much of the Kennedy Administration as a member of the House Rules Committee, he was the only Southerner who voted on the liberal side, often giving the President a one-vote margin until the committee was expanded.

Childhood Influences

Part of Judge Thornberry's ability to make up his mind quietly and then adhere to a



The New York Times

He "makes pretty clear what he means."

household with little money."

Though like many Texans in public life, Judge Thornberry is a competent spinner of tales, he has the capacity for understatement. Once, when recalling how he ran for the Texas Legislature in 1936 — he has never lost an election — with a campaign fund of \$100, he added: "Politics didn't cost as much then."

Part of the judge's success is undoubtedly due to his friendship with President Johnson, who used to refer to him as "my Congressman." Mr. Thornberry represented the 10th Congressional District in Texas, where he succeeded Mr. Johnson in 1948 and from which the President votes.

When Mr. Johnson was hospitalized with a heart attack, Mr. Thornberry visited him and played dominoes with him, a favorite pastime of Mr. Thornberry's. He was sworn in as circuit judge on the lawn of the L.B.J. Ranch.

Mr. Thornberry met his wife, the former Eloise Engle, during World War II, while he was stationed at Corpus Christi, where she was a civilian employe. They have three children — Molly, David Homer and Kate.

As excitement swept through Austin yesterday, Mrs. Thornberry, remarked to an acquaintance, who phoned congratulations:

"Homer's on his way home. I'm busy fixing him a steak dinner now."

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member of his former Wash-
ington law firm, Arnold &
Porter. She practices under
her maiden name, Carolyn
Agger. There are no children.
An amusing after-dinner
speaker who often pokes
gentle fun at himself as well
as at jurists and the legal
profession in general, Mr.
Fortas acknowledges occa-
sional verbosity.
"My problem," he says, de-
scribing some of his lengthy
opinions, "is that I like to
begin each opinion with the
invention of money."
decision despite pressure
stems from his childhood ex-
periences. He was born Jan.
9, 1909, and both his parents
were deaf mutes. He com-
municated with them through
sign language. His father died
when he was a boy. He
worked his way through the
University of Texas and its
law school.
Many years later, a publi-
cation at the University of
Texas said of its eminent
alumnus:
"He grew up in a silent
a valuable counselor. Mr.
Texas and impressed him as
Mr. Fortas met Representa-
tive Lyndon B. Johnson of
In the late nineteen-thirties
L. Ickes.
Secretary of the Interior to Harold
Deal. He served in about a
dozen administrative post-
positions, relished the bureau-
cratic infighting between the
new agencies, and at the age
of 32 became Under Secre-
tary of the Interior to Harold