

THE NEW YORK TIMES, SATURDAY, SEPTEMBER 21, 1968

Ervin Calls Fortas Nomination Blow to Senate Role

WASHINGTON, SEPT. 20 (UPI) — Senator Sam J. Ervin Jr. said today that “the constitutional function of the Senate” was victimized by the manner in which Chief Justice Earl Warren conditioned his retirement from the Supreme Court on Senate confirmation of a successor.

While the Senate Democratic leader, Mike Mansfield of Montana, pleaded for “dignity and decorum” when the Senate opens debate on the nomination of Abe Fortas to succeed Justice Warren, Senator Ervin was delivering a speech before the board of directors of the National Association of Manufacturers at Hot Springs, Va.

His office here made public the text.

“The joint decision of the Chief Justice and the President that the Chief Justice’s resigna-

tion is to be effective on the confirmation of his successor by the Senate has changed — subtly, but importantly — the constitutional function of the Senate,” the North Carolina Democrat contended.

“Whereas in the past, the Senate considered the qualifications of nominee against the demands of the office, now, in practical effect, the Senate is also choosing between the incumbent and his successor,” Senator Ervin argued.

Senator Mansfield, talking to reporters, said he planned to let the debate—scheduled to begin Tuesday or Wednesday—run for four or five days before trying to cut it off through cloture, a parliamentary device to end filibusters by the votes of two-thirds of the senators voting.

Opponents of Justice Fortas

said they had 45 to 50 Senators lined up to vote against cloture. It would take only 34 to defeat it and continue the filibuster.

Senator Philip A. Hart, Democrat of Michigan, whose of the nomination is as vigorous as Senator Ervin’s opposition, said that efforts to brand Justice Fortas a champion of obscene movies were as obscene as the movies themselves.

“Those who hold up reels of film as an indictment of the Supreme Court should, in fairness, point out that the Supreme Court never commented on the content of those films,” Mr. Hart said in a speech prepared for the Senate. He said the Court’s decisions in obscenity cases “had much to do with legal procedure and hardly anything to do with content.”

Senator Robert P. Griffin, Michigan Republican, accused the White House today of trying to create the impression that opponents to the nomination of Abe Fortas as Chief Justice were motivated by anti-Semitism.

If confirmed, Justice Fortas would become the first Jew to hold the nation’s highest judicial post.

Senator Griffin said that he had received “indications the White House, both directly and indirectly, is stirring this up,” but he offered no evidence to substantiate the charge.

Lindsay Backs Fortas

Mayor Lindsay said yesterday that he believed Richard M. Nixon should urge confirmation of Justice Abe Fortas as Chief Justice of the United States “if it would help.”