

Justice Fortas Furor Creates

WASHINGTON — There's a difference of opinion inside the Nixon administration regarding the investigation of Justice Abe Fortas.

After the story about the \$20,000 payment from the Louis Wolfson Foundation broke, President Nixon admonished Republican congressional leaders privately not to exploit the incident.

"It is necessary to avoid partisanship in this," he said at a White House strategy meeting. He indicated it is up to the Supreme Court to discipline its own members.

House GOP Leader Gerald Ford of Michigan replied congressmen are beyond party control

and anyone can introduce an impeachment resolution. He assured President Nixon, however, there was "no inclination by either party to go ahead" with impeachment proceedings.

Carrying out Nixon's idea, Sen. Everett Dirksen made a statement on Capitol Hill that Fortas had done nothing illegal.

Attorney General John Mitchell told the GOP leaders the Justice Department is

following the developments. He indicated there may be other facts that haven't yet been disclosed but he didn't hint what those facts might be. The hints probably resulted from the fact some of Mitchell's staff have been like an overeager bird dog in jumping into the Fortas case.

It was the Justice Department that cooperated with Life magazine in running down some of the angles of the Fortas-Louis Wolfson relationship.

The Justice Department also had tipped off President Nixon the story was going to break, so he knew about the case at least two weeks in advance. In fact he probably knew about it on April 22, on which date the Nixons gave their formal dinner for retiring Chief Justice Earl Warren. All the Supreme Court members attended the dinner.

The President was extremely gracious toward everyone that evening, including Justice Fortas.

One day before the story broke, Justice Fortas himself attended the annual mental health ball at the Shoreham Hotel and was both gracious and nonchalant. If he knew all hell was about to break over his head the next day — as he must have — he did not show it. He danced almost every dance, to raise money for mental health.

The chief difference inside the Nixon administration comes not over an opinion on Fortas' conduct in temporarily accepting the Wolfson Foundation fee — there is unanimity on this subject — but over the investigation of the former Fortas law firm — Arnold and Porter.

Some attorneys inside the administration and many outside regard this as pure persecution, especially since Fortas left his law firm two years before the incidents now being investigated occurred.

Despite this, the Justice Department now hastily has summoned a federal grand jury in Toledo even though Assistant Attorney General Fred Vinson Jr., son of the late Chief Justice Vinson, had investigated the charge of withheld evidence and dropped it.

The Arnold and Porter law client involved was the Donovan Steel and Wire Co. of Toledo, charged with anti-trust violations and links with the Mafia. The company had been using fake invoices.

When the Justice Department subpoenaed the company's "invoices," it did not clarify whether it wanted the fake or real invoices. Paul S. Berger, junior partner in the Arnold and Porter firm, decided it was his business to protect his client, not define

the government's case for it; so he advised the Donovan firm to answer the subpoena with the real invoices, not the fakes.

Finally, in June 1968, the Justice Department issued a more specific subpoena and the Donovan firm produced 1,000 fake invoices. It was convicted. All this took place long after Justice Fortas left his law firm.

The case is being debated hotly in legal circles, where it is the contention of most lawyers that it is the job of the government to be specific when it issues subpoenas, and not the job of private lawyers either to read the government's mind or do legal work for it.



DREW PEARSON

Nixon-Justice Department Conflict

Many also believe that to call a federal grand jury and reopen the Toledo case at this late date is persecution that can turn sentiment in Fortas' favor.

JOSEPH BORKIN, former Justice Department antitrust attorney and author of the book, "The Corrupt Judge," states the law regarding the conduct of federal judges is ambiguous. There is no law prohibiting a judge from engaging in private practice or taking a fee, so long as he does not practice against the United States.

The law is clear he cannot take a bribe. Also, he cannot be removed except by impeachment, which has to be

initiated by the House of Representatives. Otherwise the law is vague, says Borkin.

As a result of Borkin's book on judicial malpractice, Sen. Estes Kefauver of Tennessee introduced a bill setting up a code of ethical conduct for federal judges. It was the kind of bill Sen. Dirksen and Rep. Ford, the GOP leaders, recommended last week. However, it died in committee.

Recently Sen. Joe Tydings, the young Maryland Democrat, working with Borkin, introduced a new and forthright bill, stronger than the Kefauver bill, clarifying judicial conduct. If Republican leaders Dirksen and Ford get behind it, it has a good chance of passing.



JUSTICE ABE FORTAS