

FORTAS TESTIFIES HE AIDED JOHNSON WHILE A JUSTICE

Asserts That at Meetings on Riots and War He Avoided Issues Affecting Court

SAT IN ON POLICY TALKS

His Role in Sessions Was to Sum Up the Arguments of Others, He Asserts

Excerpts from the testimony will be found on Page 24.

By FRED P. GRAHAM
Special to The New York Times

WASHINGTON, July 16—Justice Abe Fortas testified today that since he joined the Supreme Court he had assisted President Johnson in strategy planning conferences on the Vietnam war and urban riots.

However, he insisted that he had never advised the President on issues that could reach the Supreme Court, and he asserted that his role in the meetings was to sum up the arguments presented by others.

Justice Fortas explained that he had participated in only a few, critical decisions. He said he did so out of a desire to serve the President and his country and pointed out that the opportunity for further such activities on his part "will be concluded Jan. 20 of next year"—when Mr. Johnson's term expires.

He denied reports that he had tried to obtain for Bill D. Moyers, a former White House press secretary, a position as Under Secretary of State, or that he had lobbied to secure a Federal judgeship for David G. Bress, United States attorney for the District of Columbia.

Role in Discussions

Justice Fortas said he was "rather certain" that he had not recommended anyone for a public position since he joined the high court.

Justice Fortas testified before the Senate Judiciary Committee in the first appearance by a nominee for Chief Justice before a Congressional panel. The disclosure by a Supreme Court justice of participation in White House decision-making was unprecedented.

The hearings are being held because the Senate must confirm the President's nomination of Justice Fortas as Chief Justice and of Homer Thornberry as Associate Justice.

Describing his role in Vietnam discussions, Justice Fortas said:

"Perhaps I can say there have been stages in the fantastically difficult decisions about the war in Vietnam where I have participated in meetings of the kind that I described. I say that because it has been published, and that is true.

Won't Give Number

"Now, I am not an expert on Vietnam or the Far East, or anything like it. But the President seems to think that I can serve a function by setting forth the considerations that have been stated by others on various sides of the question, and I have done that."

Asked about a report that he helped draft the message given by Mr. Johnson when he ordered Federal troops into riot-torn Detroit last summer, Justice Fortas said:

"I did not write that message. I did see it before it was delivered. But I did not write it."

Justice Fortas resisted requests by some committee members that he give details of various policy planning sessions that he had attended.

He implied that he had taken part in several sessions on the war, but would not say how many, on the ground that future Presidents might have difficulty obtaining outside advice

Continued on Page 24, Column 5

Continued From Page 1, Col. 8

if such disclosures were made.

He did say that in acknowledging his role in the Vietnam and urban riot discussions he had "made full disclosure" of his participation in White House affairs.

"Since I have been a Justice," he added, "the President of the United States has never, directly or indirectly, approximately or remotely, talked to me about anything before the Court or that might come before the Court."

When Senator Sam J. Ervin Jr., North Carolina Democrat, remarked that it was "sort of queer for a member of the judiciary to be involved" in consultations with the President, Mr. Fortas replied:

"I did not seek the post of Justice of the Supreme Court of the United States. That was not part of my life plan. . . .

"He, nevertheless, as is well known, insisted that I do this—that it was my duty to do it. And I took on this responsibility.

"It is in the same vein, I assure you, in exactly the same vein and reluctance, but with the feeling of pride and honor,

that I have responded to his calls to come and help in these few instances of national crisis."

Senator Ervin attempted unsuccessfully to interrogate the jurist on recent Supreme Court decisions.

At first, Justice Fortas answered freely as Senator Ervin posed questions about his general constitutional philosophy. Mr. Fortas stressed the fact that he had demonstrated concern for states' rights in recent opinions on local apportionment and the states' obligation to provide jury trials in criminal cases.

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He gently twitted Senator Ervin by quoting from a 1949 opinion in which Mr. Ervin, as a Justice of the Supreme Court of North Carolina, reverse earlier precedent.

He also reminded that he had argued the winning side of a case this year.

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