DREW PEARSON

Fortas Admission Strengthens Foes

WASHINGTON—Justice Abe Fortas's admission that he gave advice to President Johnson on high policies of state has strengthened Senate opposition to his confirmation. In fact, his testimony that he had summarized the advice of others on Vietnam for the President may have lost him support among some liberal senators.

It had long been known in Washington society that the Fortases canceled out on dinner parties because they were suddenly called to intimate family dinners at the White House.

It was also known that President Johnson had asked Fortas' advice on a great many subjects ranging from whom he should appoint as attorney general and whom he should appoint to the regulatory agencies, to the war in Vietnam. The President himself has been quite frank about this, even when Fortas himself was denying it.

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On more than one occasion after he was appointed to the Supreme Court, Fortas remarked bellicosely that it was libel per se to print reports that he had been conferring with President Johnson. Obviously this was a sensitive matter—though he has now confessed it to the Senate Judiciary Committee.

But the President himself was not so sensitive, and frankly informed many people that Justice Fortas was one of the trusted friends on whom he leaned for advice.

Now it develops from Fortas's own testimony that he must have been the leading hawk among the war advisers. This had been suspected but never documented.

The President numbered among his advisers Secretary of State Rusk, who assumed the role of impartiality; former Secretary of Defense McNamara, a definite dove; Ambassador Averell Harriman, a dove; Walt Rostow, a hawk; Under Secretary of State George Ball, a dove; Ambassador Arthur Goldberg, a dove; the joint chiefs of staff, hawks; and Clark Clifford, who since he has become Secretary of Defense has been revealed as something of a dove.

IF JUSTICE FORTAS summarized this conflicting advice for the President, then by his own testimony it would appear that he kept the President on a war course which turned out to be one of the most disastrous in the history of the United States; a course which has undermined the other truly great domestic accomplishments of the President.

Testifying on other matters, Fortas glossed over his persistent recommendation that U.S. Attorney David Bress be made a U.S. district judge. Bress has been an excellent U.S. attorney and deserves reward. However, the basic point is whether a member of the Supreme Court should recommend judgeships. Under the constitutional separation of the executive from the judiciary, he should not. Yet Fortas recommended Bress as U.S. attorney in the first place, and then asked that he be promoted to be a judge in the second place.

He was also firm in vetoing such men as New York attorney Louis Nizer to be attorney general, though this occurred before Fortas assumed his position on the bench.

No Supreme Court justice has conferred with the President more than has Fortas, except for Justice Felix Frankfurter, who was a notorious busybody in running back and forth between the court and the White House.

* * *

ALL OF THIS RUNS counter to the long history of the United States in which the chief justice has been completely independent of the White House, sometimes at loggerheads with it.

It began with Chief Justice John Marshall, whom Thomas Jefferson described as "a crafty chief justice who sophisticates the law to his mind by the turn of his own reasoning."

Yet it was John Marshall who probably more than any other man used the Supreme Court to keep the early struggling states from becoming a loose-knit federation. Had it not been for John Marshall's tough decisions and his independence of the White House, the United States would not be the powerful country it is today.

The tug-of-war between the court and the White House continued under Abraham Lincoln, who said of the Dred Scott decision that it got the doctrine of democracy down "as thin as the homeopathic soup made by boiling the shadow of a pigeon that had starved to death."

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