

FORTAS'S OLD FIRM FACES U.S. INQUIRY

Grand Jury in Ohio to See if
a Case Was Obstructed
by Advice to a Client

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WASHINGTON, May 6—The Justice Department has quietly begun a grand jury investigation into an action, taken in 1967 by Justice Abe Fortas's former law firm, that delayed the production of documents sought by Federal antiracketeering attorneys from one of the firm's clients.

The investigation was under consideration for months, and Nixon Administration officials are embarrassed that it is starting at a time when prominent Republicans here are calling upon Justice Fortas to resign from the Supreme Court.

Some democrats have expressed private suspicions that the Nixon Administration may have helped Life magazine with its expose this week of the \$20,000 fee allegedly paid to Justice Fortas by the family foundation of Louis E. Wolfson, the convicted stock manipulator.

Even though Justice Fortas has said that the money was returned, the disclosure has created acute embarrassment

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for Democrats here, because of Justice Fortas's long and close association with former President Lyndon B. Johnson.

There was grumbling today among former Democratic Justice Department officials as the word circulated that the new Administration had asked a Federal grand jury in Toledo, Ohio, to look into the matter involving Justice Fortas's former law firm.

It is widely known here that Fred M. Vinson Jr., chief of the criminal division under President Johnson, investigated the matter, found no criminal wrongdoing and closed the books on it without taking any action.

Career lawyers within the criminal division asked the present Administration to take another look, and it has now asked a grand jury to see if the law has been violated.

Two members of the law firm, now called Arnold & Porter, were invited to testify and were scheduled to appear before the Toledo grand jury tomorrow. The two lawyers, Paul A. Porter and Paul S. Berger, were granted a delay. They may testify in about two weeks.

Justice Department officials would not comment on the investigation.

Attorney General John N. Mitchell is known to have been so eager to avoid any suggestion that the move was motivated by politics that he obtained the opinions of career attorneys outside of the criminal division before he cleared it for presentation to the grand jury.

He then authorized the grand jury investigation. The

question is whether obstruction of justice was committed when Arnold & Porter advised a client under investigation for having allegedly used fake invoices as a cover for Mafia transactions to answer a subpoena by producing real invoices, not fakes.

Meanwhile, a number of developments were taking place in the controversy over the Fortas fee:

¶Although the Justice Department was silent on the Wolfson matter, Republican sources on Capitol Hill reported that the criminal division was investigating possible violations of Title 18, Section 230 of the United States Code, which makes it a crime for a judicial officer to accept money to represent a party in dealings with the Government.

The sources said that the Justice Department was also studying Title 28 of the code, Section 454, which makes it a misdemeanor for a judge to practice law.

¶Justice Fortas gave no indication of wabering under the demands for his resignation. A Court spokesman said that he would fulfill scheduled speaking engagements at Northeastern University, Boston, on Thursday; Richmond on Saturday and Memphis State College on Monday.

¶The Senate minority leader, Everett McKinley Dirksen, and the House Republican leader, Gerald R. Ford, told reporters this morning that they had discussed the Fortas matter briefly with President during a one-hour meeting today.

They then suggested that Congress consider require Federal judges to disclose outside income, as members of Congress and the executive

branch are now required to do.

¶A published report that the other members of the Supreme Court had undertaken an unofficial investigation was denied by a source close to the Court. The Supreme Court's press spokesman declined to comment.

The Justice Department's move against the former Fortas law firm has surprised some lawyers here because it involves subtle questions of lawyers' tactics and their discretion under the adversary legal system to take advantage of ambiguities in the Government's legal documents.

In August, 1967, Mr. Berger was representing the Donovan Steel and Wire Company of Toledo, a target of intense investigation by the Federal Trade Commission and the Justice Department's antiracketeering officials.

The Justice Department subpoenaed the company's "invoices . . . for sales." Arnold & Porter advised the company to submit the real invoices, not the fakes.

Subsequently, criminal charges were brought against two of the company's officials, and Vincent J. Fuller of the Washington law firm of Edward Bennett Williams took over the defense.

The Government issued a more specific subpoena in June, 1968, and about 1,000 fake invoices were produced by Mr. Fuller. The company's officials were convicted of having obstructed justice.

The matter first came to public notice on Sept. 20, 1968, when Mr. Fuller announced in open court in Toledo that 28 more fake invoices had been found in the Arnold & Porter office after its safe was burglarized on Aug. 26.