

FORTAS QUILTS THE SUPREME COURT, DEFENDS DEALINGS WITH WOLFSON; LIBERAL MAJORITY MAY BE CURBED

2 VACANCIES OPEN

Nixon's Choices Can Alter the Direction Taken By Court

By **ROBERT B. SEMPLE Jr.**
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WASHINGTON, May 15—The resignation of Associate Justice Abe Fortas today gave President Nixon two positions to fill on the Supreme Court as well as a rare opportunity to change the direction of the Court's opinions.

It is known that Mr. Nixon is eager to make a decision on a replacement for the retiring Chief Justice Earl Warren, within the next two weeks and to have the new Chief Justice confirmed before the present Court term ends in mid-June.

It is believed that the Administration would like to win confirmation of Mr. Fortas's successor at the same time.

Observers of the Court expect little significant change, regardless of whom Mr. Nixon chooses, in the fields of civil rights and antitrust law. Moreover, many of the Warren Court's major decisions — on school desegregation, for example, or the apportionment of state legislatures — are for all practical purposes irreversible.

Liberal Dominance May End

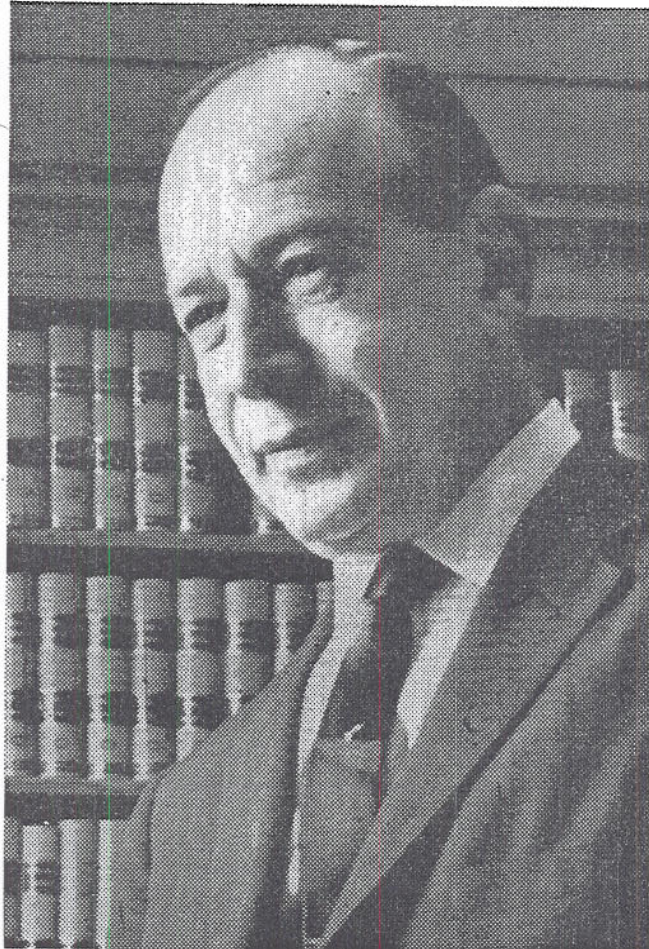
But in the highly controversial area of criminal law, the rule of the Court's liberal majority may be at an end.

Ever since Thurgood Marshall replaced Tom Clark, a conservative, on the Warren Court in 1967, there has been a fairly consistent majority of six Justices, who have sought to broaden the rights of criminal defendants: Chief Justice Warren, Justice Fortas, Justice Marshall, Justice William O. Douglas, Justice William J. Brennan and Justice Hugo Black.

Justice Potter Stewart, Justice Byron R. White and Justice John Marshall Harlan have been relatively more conservative on cases involving constitutional protection of the rights of defendants.

If Mr. Nixon should fill the two vacancies with "strict con-

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The New York Times (by George James)
Abe Fortas in his law library

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structionists"—as he pledged to do in the campaign—then the weight of opinion on the Court would shift to those who, like the President, believe that the Warren majority has too generously interpreted Fifth Amendment safeguards against self-incrimination.

Names Mentioned

The rumor mills of the capital are already churning out a host of names from which Mr. Nixon might select a Chief Justice and Mr. Fortas's replacement.

Until the Fortas disclosures came to light, the list of eligible persons had included several of the President's close associates, including Secretary of State William P. Rogers, Attorney General John N. Mitchell and a former classmate of Mr. Nixon's at Duke University Law School, who is a former president of the American Bar Association.

But because Mr. Fortas was one of Mr. Johnson's closest friends, leading to a charge of "cronism," the Administration is likely to think twice before putting someone who is close to the White House on the Supreme Court.

The principal casualty of the

fear of "cronism" is probably Mr. Mitchell. He has said he does not want a job on the court; but his role as Mr. Nixon's representative in the effort to persuade Mr. Fortas to resign was expected to foreclose his ascension to Mr. Fortas's seat.

During the campaign, Mr. Nixon told almost every audience that the court had "gone too far in weakening the peace forces as against the criminal forces in this country."

This raised the probability that he would place highest priority on replacing Chief Jus-

Justice Warren with a "strict constructionist."

It is the Chief Justice, as Mr. Warren demonstrated, who tends to set the tone for the entire Court.

By this standard, Justice Stewart, 54 years old, is clearly the most eligible member of the Court for promotion from within.

The author of several much-dispatch decisions, he is nevertheless generally acceptable to Congressional moderates and conservatives.

Another current favorite is a judge of the United States Court of Appeals for the District of Columbia, 62-year-old Warren E. Burger, a moderate on civil rights who at the same time has taken a strong "law and order stand" in criminal cases.

Off the bench, he has spoken out against the Warren Court's trend toward liberal, activist decisions.

Federal Judge Henry A. Friendly of New York, another judicial conservative who has suggested modifying the Fifth Amendment privilege against self-incrimination, has also received frequent mention as a possible Chief Justice.

Judge Friendly, a Jew, also appears to be a likely candidate for the Fortas seat, which is the Court's traditional "Jewish seat."

A recent entry is the name of Lawrence E. Walsh, a highly respected jurist who served as Deputy Attorney General in the Eisenhower Administration. He is also a former Federal District judge for the Southern District of New York.

He is now on leave from a New York law firm and is serving as a member of Henry Cabot Lodge's negotiating team at the Paris talks on the Vietnam war.