

From a Shoe Store to Legal Fame and Wealth

By E. W. KENWORTHY

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There was an irony about Abe Fortas's ascendancy to the Supreme Court in the fall of 1965. He did not aspire to this great prize, the law's ultimate embodiment. It was thrust upon him by his old friend, confidant and client—Lyndon B. Johnson, President of the United States. Abe Fortas was quite happy as a founding partner of the Washington law firm of Arnold, Fortas & Porter, where he alternated between representing "fat cats" and underdogs.

Man
in the
News

From the "fat cats" he and his wife, Carolyn Eugenia Agger, one of the nation's foremost tax lawyers, earned a steady income estimated at more than \$200,000 a year, enabling them to live in a style that neither had been accustomed to in their early years but that both had come to relish — a Georgetown house hung with valuable modern paintings, a summer home in Connecticut, a Rolls Royce.

From the underdogs, Mr. Fortas earned a well-deserved fame, winning cases that expanded constitutional and legal protections for indigent suspects, for the criminally insane, for Government officials loosely charged as security risks and for teachers required to establish their loyalty by oath.

Four years ago, when Mr. Fortas went to the Court, it was known among his friends and in the confraternity of the bench, the great law schools and the big law firms that he would probably prefer to go on doing what he had been doing since he left Government in 1946—to practice law, particularly appellate law before the Supreme Court; to make money; to play the violin once a week in a string quartet of two amateurs and two professionals, and to be on call for advice to Lyndon B. Johnson.

And yet among lawyers there was almost universal approbation when President Johnson called Mr. Fortas on July 29, 1965, told him to come to the White House and announced his nomination, saying: "I've just sent 50,000 men to Vietnam and I'm sending you to the Supreme Court."

This approbation was not because Abe Fortas was universally liked. He was not. He was a man too impersonal, too austere, too intense to have made many close friends. More than that, he sometimes impressed associates as a man who yielded to the temptation to arrogance and the wounding phrase because he was not unaware of his intellectual superiority.

Thus, during World War II when Wayne Morse (then with the War Labor Board and no mean lawyer and infighter himself) accused Mr. Fortas in an exchange of letters of using "trickster" tactics in an intergovernmental squabble, Mr. Fortas replied that he thought Mr. Morse was "completely unsuited for any position which required the exercise of judgment and balance" and that his conduct had been "unscrupulous, undignified and irrational."

Abe Fortas



Abe Fortas, silhouetted in his Washington home yesterday

The New York Times (by Mike Lien)

The accolades that greeted the Fortas appointment—despite the fact that many lawyers worried about his cozy relationship with President Johnson—were prompted by respect for his mind, his legal scholarship, his large sympathy for the poor and racial minorities and his determination to bring them within the protection of the Fourteenth Amendment.

And it was precisely here that Mr. Fortas most won the respect of lawyers, because he was not motivated by any maudlin sympathy for the individuals he represented without fee — for some of them were derelicts and even criminals deserving no sympathy—but rather thought that the ruling or legislation he sought would be good for society. Thus Mr. Fortas tended to identify his efforts to promote the libertarian trends in constitutional law with a civilizing process in human relations.

All of this explains why a Washington lawyer who had worked closely with Mr. Fortas said of him on his nomination:

"Of all the men I have met, he most knows why he is doing what he does. I don't like the guy, but if I were in trouble, I'd want him on my side. He's the most resourceful, the boldest, the most thorough lawyer I know."

And recently Charles E. Wyzanski Jr., chief judge of the United States District Court in Boston, spoke thus of Mr. Fortas's professional qualifications:

"In professional capacity, no man is better qualified for the Supreme Court since [Louis D.] Brandeis. He really is extraordinary."

Judge Wyzanski paid Mr. Fortas what must be the ultimate tribute among the jurists after Mr. Fortas voted (in the minority) to overturn Judge Wyzanski's decision in the Grennell antitrust case.

After reading the Fortas dissent, Mr. Wyzanski declared openly that he himself and the Supreme Court majority that sustained him had all been wrong.

"Justice Fortas went to the heart of my error," Judge Wyzanski told friends. "If I had heard him beforehand, I would certainly have rewritten my opinion."

Justice Brandeis was Mr. Fortas's hero—not only for his craftsmanship but also because Mr. Brandeis leavened his craftsmanship with a lifelong zeal for liberal and humane causes.

"The law often sharpens the mind by narrowing it," said Edmund Burke. But no one ever said this of Mr. Fortas.

Abe Fortas was born in Memphis, Tenn., on June 19, 1910, the youngest of five children of William and Ray (Berson) Fortas. His father, an Orthodox Jew, was a cabinet maker who had immigrated from England. The family was poor, and Abe helped by working in a shoe store and playing the violin in a jazz band while he was in high school. He went to Southwestern College in Memphis, taking his B.A. degree in 1930. Then he went to Lale Law School, where he came under the tutelage and sponsorship of Prof. William O. Douglas. He took his degree in 1933.

"At Yale he was the golden boy," a lawyer here said today. "He was editor-in-chief of the Yale Law Journal. He graduated first in class. He was perhaps the most brilliant legal mind to come out of Yale Law School."

Not exactly a witty man, Mr. Fortas reserves his wry, humorous sallies for dinner parties with close friends. He once said with full savor:

"There are few things in a

lawyer's life more rewarding than a substantial corporation whose officers are threatened with criminal prosecution. Here we have an ideal combination: a long purse, moral indignation, a protracted trial and a reasonable amount of fear."

Mr. Fortas's firm has had its full share of such joys, even though not all of its substantial corporate clients faced criminal prosecution. Among the largest and best known have been Lever Brothers, Investors Diversified Services, Federated Department Stores, Philip Morris, Coca Cola and Pan American Airways.

During his years at the Interior Department, Mr. Fortas had close ties in his official capacity with Puerto Rico. One of the first big clients of the Arnold, Fortas-Porter firm was the territorial government. For thus using his Government connections, Mr. Fortas drew down upon himself the public condemnation of his old friend, Harold Ickes.

While Mr. Fortas made his fortune from rich clients, he made his fame from poor ones. He won appeals to the Supreme Court that overturned teachers' loyalty oaths and reversed the conviction of Owen Lattimore, for perjury before the Senate Internal Security Subcommittee.

His arguments prevailed in two landmark cases. In one, the Court of Appeals for the district of Columbia overturned the old "recognition of right and wrong" test of the criminally insane, ruling that an accused is not criminally responsible if his unlawful act was the product of mental disease or defect." In the other, the Court ruled that the Constitution required the States to assure free counsel for the poor in every serious criminal case.

As a Justice, Mr. Fortas specialized in expanding the constitutional right of children in juvenile courts, and he has joined the liberal bloc on rulings dealing with civil rights, civil liberties and the rights of criminal defendants. But he has parted company with them several times when they ruled against big business mergers, and he had been less generous than the majority in marking the limits of press criticism of public figures.

Mr. Fortas's firm friendship with Lyndon Johnson took root in 1943 when "Landslide Lyndon" beat Coke Stevenson by 87 votes in the Democratic senatorial primary in Texas. Alleging irregularities, Mr. Stevenson was successful in having a Federal district judge rule Mr. Johnson's name off the ballot. Mr. Johnson went to Mr. Fortas, who went to Justice Black—the Court not being in session—who ordered Mr. Johnson's name back on the ballot on the ground that the district judge had improperly interfered in state election procedures.

Mr. Fortas became one of Mr. Johnson's closets advisers—the other two are James Rowe and Clark Clifford—and he maintained this relationship even after he went on the Court. He has counseled the President on appointees, on legislation, on Executive orders. Above all, he has re-enforced the President's "hawkishness" on Vietnam.