

# NIXON INFLUENCED BY FORTAS AFFAIR IN COURT CHOICES

President Says His Friends  
Were, and Will Be, Ruled  
Out of Consideration

Excerpts from Nixon's news  
conference are on Page 27.

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Special to The New York Times

WASHINGTON, May 22—President Nixon said today that the resignation of Abe Fortas from the Supreme Court had helped determine his choice of a new Chief Justice and would influence equally his selection of Mr. Fortas's successor.

The President said the Court required a quick infusion of men whose nominations raised no questions of close political or personal ties to the White House. He asserted that several eminently qualified men had not been chosen for the Chief Justiceship for precisely that reason, and he indicated that he would not appoint a close personal or political friend to the Fortas vacancy.

Mr. Nixon disclosed that four other men, who had seriously been considered for the post, had turned it down. They were Attorney General John N. Mitchell, former Attorney General Herbert Brownell, former New York Gov. Thomas E. Dewey and Associate Justice Potter Stewart.

A fifth candidate, Charles S. Rhyne, former president of the American Bar Association and one of Mr. Nixon's classmates at Duke University Law School, was rejected because he and the President agreed that their personal relationship was so close that charges of "cronyism" might be raised.

Mr. Nixon's views emerged during an unusual 45-minute news conference in his Oval Office this morning—the first exchange of its kind between the President and reporters.

It was different from his tele-

Continued on Page 26, Column 5

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## Nixon Was Influenced by Fortas Case

Continued From Page 1, Col. 1

vised news conferences in both style and substance. Sitting at his desk and speaking in a low voice, he addressed himself to issues with greater freedom and in greater depth than usual.

He said that the content of his remarks could be used in full, but he asked that he not be quoted directly because the White House had not announced a formal news conference well in advance, as is the custom. Reporters were given only 10 minutes warning before they were ushered into his office.

Mr. Nixon was in a jovial mood and appeared rested. He spoke nonstop for the first 35 minutes, limited himself to one general topic—the court—and permitted a few questions at the end.

He discussed at length his reason for choosing Judge Warren E. Burger as Chief Justice and for not appointing others.

His candid discussion of the other candidates for the Chief Justiceship was regarded by White House observers as a rare Presidential gesture.

His references to the resignation last week of Mr. Fortas were occasionally oblique, but his meaning was unmistakable. He clearly hopes that whatever damage has been done to the Court's reputation is swiftly repaired, and he does not mean to increase the damage by appointing an old associate.

Among Mr. Nixon's major points were these:

¶He said that he had selected Judge Burger in large part because the judge shared his view that the Constitution should be rigorously interpreted and, specifically, his view that the Court may have gone too far in broadening the rights of suspects in criminal cases.

¶He conceded that a Presi-

dent, by his choices, could do much to shape the Supreme Court, and he flatly asserted his hope that Judge Burger's strict views would prevail in the new Court. But he emphasized that as President he would stay clear of the Court's deliberations and that the Court, and its Chief Justice, should be utterly independent of the Executive branch.

¶For this reason, he suggested, he had not talked at all to Judge Burger about the nomination and had not cross-examined the judge on his philosophy. He said that he had decided on Judge Burger last weekend but that he had not spoken to him personally until three minutes before the announcement last night.

The only person who knew the President's thinking in any detail was Mr. Mitchell, who checked Judge Burger's credentials and background and who offered him the post at lunchtime Wednesday. The President said that he did not discuss the matter with his White House aides.

### Others Considered

In discussing the five other men considered, Mr. Nixon said that Justice Stewart came to the White House several weeks ago and personally requested that he not be considered because he did not believe that a sitting judge would be the best choice for Chief Justice.

Mr. Mitchell and Mr. Brownell took themselves out, Mr. Nixon said, for essentially political reasons: Mr. Mitchell because he had been Mr. Nixon's campaign manager, and Mr. Brownell because he had served as President Eisenhower's Attorney General.

Both felt that their names might provoke a hard political fight, and Mr. Nixon said that he felt that the new Chief Jus-

tice, in part because of the Fortas affair, should command broad Congressional support.

Mr. Dewey, 67 years old, asked that he be removed from consideration because of his age and his belief that a Chief Justice should serve for at least 10 years.

In response to a question, Mr. Nixon said that the personal and political considerations that had barred Mr. Mitchell, Mr. Rhyne, and Mr. Brownell from the post also ruled them out for the vacant Associate Justiceship created by the Fortas resignation.

Addressing himself to the remaining vacancy, Mr. Nixon said he shared former Justice Arthur Goldberg's view that one seat on the Court should not be regarded as the "Jewish" seat, and he said that as long as he was in office he would not use the Court to achieve racial, religious or geographical balance. Mr. Burger is a Presbyterian.

Mr. Nixon indicated that Mr. Fortas's successor would be selected, as was Judge Burger, from an appellate or district court. He said he valued such experience highly, although in the end he did not rule out others whom he might regard as eminently qualified, such as constitutional lawyers or faculty members at leading law schools.

Two names frequently mentioned in speculation are Stanley Fuld, judge of the New York State Court of Appeals, and Henry J. Friendly, judge of the United States Court of Appeals for the Second Circuit. Both are Jews and are therefore given a good chance on grounds that Mr. Nixon — despite his disclaimer today — may find it politically difficult not to fill Justice Fortas's seat with another Jew.