

PROCEEDINGS IN THE SUPREME COURT OF THE  
UNITED STATES IN MEMORY OF  
JUSTICE FORTAS\*

MONDAY, DECEMBER 13, 1982

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Present: CHIEF JUSTICE BURGER, JUSTICE BRENNAN, JUSTICE WHITE, JUSTICE MARSHALL, JUSTICE BLACKMUN, JUSTICE POWELL, JUSTICE REHNQUIST, JUSTICE STEVENS, and JUSTICE O'CONNOR.

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THE CHIEF JUSTICE said:

The Court is in special session this afternoon to receive the Resolutions of the Bar of the Supreme Court in tribute to our former colleague and friend, the late Justice Fortas.

The Solicitor General is recognized at this time for the purpose of presenting those Resolutions which were adopted by the Bar. Mr. Solicitor General.

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Mr. Solicitor General Lee addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

The members of the Bar of the Court met this day and have adopted resolutions in honor of Justice Fortas. And I would ask leave of the Court to present those resolutions at this time.

Abe Fortas, Associate Justice of the Supreme Court of the United States from 1965 to 1969, died at his home in Washington, D. C., on April 5, 1982. He was 71 years old, but even for a man whose career had been so rich, so varied, and

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\*Justice Fortas, who resigned from the Court effective May 14, 1969 (395 U. S. 111), died in Washington, D. C., on April 5, 1982 (456 U. S. v).

so fruitful, his death cannot be said to have come in the fullness of time. Only a few days before, he had argued before the Court and neither his appetite for work nor his powers showed any signs of diminishing. The members of the Bar have met in the Supreme Court building on December 13, 1982, to commemorate him as one of the great figures of our profession, to survey his vast and diverse accomplishments, and to testify to the enrichment he brought to the law, to the arts, and to the nation. To recall the details of his life is to exhibit, as the historian Burckhardt said, only the "underside of the tapestry": the knots and stitches, not the whole work. Abe Fortas was animated by a warmth, a compassion, a profound gravity that could be felt, that cannot be captured in words, but that made him who he was and whom we remember.

Abe Fortas was born in Memphis, Tennessee, on June 19, 1910. His Orthodox Jewish parents had emigrated from England. His father was a cabinetmaker who was also a sometime shopkeeper and jeweler. Abe was the youngest of five children and the family's modest circumstances dictated that any achievement he enjoyed would be self-made. He worked his way through high school by playing the violin in a small dance band. The violin began as a source of pleasure, became a means of self-support (along with part-time work in a shoe store), and remained a passion throughout his life. His academic record led to a scholarship at Southwestern College, a Presbyterian institution in Memphis. There he was president of the drama and debating clubs and leader of the school orchestra. With a near-perfect academic record, he won the Peres Scholarship to the Yale Law School, which he entered in 1930 at the age of twenty.

Propitious circumstances and the relentless application of his remarkable ability made Yale the turning point of Fortas' life. He led his class academically, was Editor in Chief of the *Law Journal*, and authored a brilliant student note at the direction of William O. Douglas, then a young Sterling Professor of Law who would later call Fortas "my prize student" and who would be an intimate friend for life. Fortas was

appointed assistant professor of law upon his graduation in 1933, but for the next four years his world had two centers, New Haven and Washington. During summers and semesters when he was not teaching he worked at the Agricultural Adjustment Administration, at the behest of two other Yale faculty members who had been drawn to the New Deal, Thurman Arnold and Wesley Sturges. In 1934, Fortas joined Douglas at the new Securities and Exchange Commission as a consultant. He became an important collaborator with Douglas in the preparation of a study of protective committees that led to major legislative revisions in reorganization proceedings under the Bankruptcy Act. Three years after joining the Commission, Fortas left the Yale faculty. In the meantime he had married Carolyn Agger. She, too, became a brilliant student at the Yale Law School and after her graduation in 1938 began the outstanding career as a tax lawyer that has continued to the present day.

In 1939, at the age of twenty-nine, Fortas became General Counsel to the Bituminous Coal Division in the Department of the Interior. Two years later he became Director of the Division of Power in the Department. In that capacity he met a young Congressman named Lyndon B. Johnson who was interested in a proposed power project in his home state of Texas. The introduction led to a life-long friendship, which included Fortas' representation of Johnson in the contested Texas Senatorial election of 1948 and in other less public matters.

Talented young men, of whom Fortas was one of the best, were able to rise quickly in the New Deal. In 1942, at the age of thirty-two, Fortas became Under Secretary of the Interior. His legal abilities had been firmly established. In the new post he demonstrated the judgment and force required to become a successful second in command to Secretary Harold Ickes, the self-styled curmudgeon of the Roosevelt administration. Fortas won Ickes' trust so quickly and to such a degree that he frequently substituted for the Secretary at Cabinet meetings.



With the declaration of war after Pearl Harbor, the business of the Interior Department acquired new gravity. The Department was charged with administering the removal of Japanese-Americans from the West Coast and with overseeing the administration of martial law in the Hawaiian Territory. Fortas fought a determined, though unsuccessful, battle to prevent the relocation and internment of the Japanese-Americans. In later years he would tell associates that he was prouder of his efforts in that cause than in any other he undertook in more than a decade of government service. With Ickes, he also fought to ameliorate the harshest aspects of martial law in Hawaii during the War.

Fortas' tenure in the Interior Department was interrupted briefly when he resigned to enlist as an apprentice seaman in the Navy. Rejecting any high-level desk assignment in the service, he was in boot camp when a persistent serious eye ailment compelled his release and he was reappointed to his still-vacant post as Under Secretary.

When the War ended, so did the New Deal. In January 1946, the law firm of Arnold and Fortas was organized in Washington, D. C. Its purpose as Fortas later recalled in a tribute to Thurman Arnold, "was to provide a means for its two partners to make a living." For almost twenty years, Fortas managed the firm and built it into one of the leading institutions in the city and in the country.

The firm was extraordinarily successful in satisfying the purposes of its founders, who later included Paul Porter, former Price Administrator during the War. But Arnold, Fortas & Porter was more than a lucrative practice meeting the needs of large corporate clients. During the period of the 1950s that Justice Douglas called the time of the "Black Silence of Fear," the firm represented not only large companies but also private citizens who were victims of anti-Communist hysteria, such as Dorothy Bailey, Dr. John Peters, Owen Lattimore, and Dr. Edward Condon, Director of the National Bureau of Standards. The cases all involved the fundamental right of individuals to differ from orthodoxy and to join, or at least to associate freely, with others of similar

views. The issues on which the firm based its defense of such cases were drier and more legalistic. "Most of them," Fortas later wrote, "involved fundamental questions of procedural rights: to specific charges, to confrontation and cross-examination, to judgments based solely on substantial evidence, to the presentation of a defense and to counsel." Each victory was one of both substance and process.

The mere fact that the firm would take an unpopular case was a repudiation of the orthodoxy that had swept the country during the period. But Fortas and his colleagues did not rest on symbolism. Each case, be the client Lever Brothers, Federated Department Stores or Ezra Pound, received the same meticulous care. In every case in which he was involved, Fortas was at once the manager and the master of the smallest detail. The temperament of the named partners in the firm was illustrated by Thurman Arnold's description of how each would have handled a trial involving the United Fruit Company. "I would try it carload by carload, Paul would try it case by case, and Abe would try it banana by banana."

Mastery of detail requires time, and in addition to his remarkable intellectual ability Fortas had enormous stamina. From his earliest days in the New Deal, law was a fourteen-hour a day, six- or seven-day a week task. To junior colleagues he could be a humorless, somewhat distant perfectionist: no early draft of any document was ever quite satisfactory. Final approval was only achieved after the most exacting professional standards had been satisfied.

Although Abe Fortas was identified with "causes," he did not see the lawyer's duty as service to a cause. The only duty was to the client, and not to the client's wishes but to the client's interests. In praising Thurman Arnold, Fortas obviously articulated a mutual view and his own credo in rejecting a new vogue: "As the young lawyer views many of today's battles, the client is of relatively little importance. The cause, not the client, is the object of dedication. The client is a technical necessity, not a person whose life or welfare is at stake. The undertaking is shaped and prosecuted not in

defense or vindication of the client, but in maximum furtherance of the idea or program." As he rejected representing causes instead of—and perhaps at the expense of—people, Fortas also refused to pass judgment on the relative moral worth of his clients. The function and responsibility of the lawyer was to serve and to represent "each client as an individual, whether the client was a corporate malefactor or a presumably saintly civil libertarian."

Two of Fortas' most important victories were for clients who fell somewhere between the poles he thus identified. His representation of Monte Durham in 1954, by appointment of the United States Court of Appeals for the District of Columbia Circuit, led to a decision that for its time was a landmark in the modern attempt to bring into closer proximity legal rules and scientific knowledge concerning insanity. Less than a decade later, again by appointment of the court, he convinced the Supreme Court that Clarence Earl Gideon was entitled under the Constitution to a lawyer to defend him in state court for a petty offense. Both cases were constitutional watersheds.

Abe Fortas was an advocate of not only the powerful and the penniless, but also of the arts. If his passion professionally was craftsmanship, his passion privately was music and art. The two merged symbolically, in the form of his desk at the firm, which was made from a Victorian grand piano. He was an effective supporter of the National Endowments for the Arts and for the Humanities. He arranged for Pablo Casals to play at the White House, and in later years he helped direct the John F. Kennedy Center for the Performing Arts. He once said that the only thing he could not live without was his music. Though he played for pleasure, his musical sense and skill were of a high order, and he played the violin and viola regularly with the talented professionals who were his friends, in the Sunday evening sessions at his home that he called The 3025 N Street Strictly No Refund Quartet. His violin was a 200-year-old Guidantus, the gift of violinist Isaac Stern, cellist Leonard Rose, and pianist Eugene Istomin. A month after Fortas' death, Stern led a



memorial concert at the Kennedy Center in memory of the man who worked to make the Kennedy Center a vital force in the arts, who with Stern successfully fought the destruction of Carnegie Hall, and who helped make the Hirshhorn Museum a reality.

Abe Fortas was a man of rare completeness—patron and practitioner of the arts, successful corporate lawyer and superb advocate, defender of the poor and the persecuted. His legal renown came as a "Washington lawyer," but not of the breed sometimes thought to provide clients with influence more than advice. Fortas knew Washington from the inside, but his success rested on an intuitive knowledge, built from the ground up, of how bureaucracies worked and thus how they needed to be addressed. His grasp of the workings of government extended to both the recondite and the mundane details. When an elevator car carrying lawyers, judges, and administrators was trapped between floors in the Export-Import Bank on the way to a meeting, Fortas opened the operator's panel, pulled a lever, flicked a switch or two and the car was once again on its way. When his fellow passengers expressed their astonishment, Fortas replied with the mock innocence he occasionally affected, "It's really quite simple, for an insider."

Fortas made fun of his personal connections in other ways. He listed his business in the 1965 edition of *WHO'S WHO IN THE SOUTH AND SOUTHWEST* as "Presidential Adviser, c/o The White House, 1600 Pennsylvania Avenue, Washington, D. C." The joke would later prove to be somewhat of an embarrassment when President Johnson named Fortas to be Associate Justice of the Supreme Court of the United States on July 28, 1965, but nothing could hide the fact that the President valued him as a trusted adviser and consulted him informally on a wide range of matters. Fortas was not eager to accept appointment to the Court, but Johnson styled the nomination as a call to "vital duty" and Fortas accepted. The President, noting Fortas' well-known reluctance to assume public office again after twenty years in private life, declared that "the job has sought the man—a scholar, a pro-

found thinker, a lawyer of superior ability and a man of deeply compassionate feelings toward his fellow man."

Abe Fortas took the constitutional and judicial oaths on October 4, 1965, to become the ninety-fifth Justice to sit on the Supreme Court of the United States. In the four terms that he sat as an Associate Justice he wrote 106 opinions—forty opinions for the Court, twenty-one concurring opinions, and forty-five dissenting opinions. His importance to the Court and to the nation during the parlous times in which he sat cannot be measured by output. Part of his value lay, as Holmes said of John Marshall, in the fact that he, and not someone else, was there during "a strategic point in the campaign of history."

His opinions did not strive for rhetorical effect. He could reduce a penetrating insight to a barbed phrase and he could summarize a complicated constitutional concept in a glistening sentence, but the quality of his work is not reflected in a string of memorable pearls. Each opinion spoke crisply with the authority of a master craftsman who readily apprehended the facts and arguments and who then went to the heart of the matter without reinventing the wheel along the way. His passion broke through the surface rarely, and then usually in cases involving the civil rights of racial minorities or the investigative abuses of the police. In both areas, he rejected abstract characterizations that hid disagreeable truths, and he sought to make equal protection of the laws and freedom from self-incrimination living realities and not technical constructs.

The days that Justice Fortas sat on the Court lent themselves to pat labels for characterizing complex social problems and the Court's role in addressing those problems. How the future will regard his times is not for us to say, but it is certain that he brought to his task a mature vision that refused to accept simple formulas. "Constitutional commandments are not surgical instruments," he wrote. "They have a tendency to hack deeply—to amputate." *Avery v. Midland County*, 390 U. S. 474, 497 (1968). He thus cautioned against the application of slogans to resolve problems



touching many institutions, and he warned that adjudication was an inefficient tool to preserve constitutional guarantees: "The full realization of our great charter of liberty, set forth in our Constitution, cannot be achieved by this Court alone." *Desist v. United States*, 394 U. S. 244, 277 (1969). He also warned that courts should be chary of overreaching, especially where economic policy was at stake either in the interpretation of the antitrust laws or in the review of agency action: "The courts may be the principal guardians of the liberties of the people. They are not the chief administrators of its economic destiny." *B. & O. R. Co. v. United States*, 386 U. S. 372, 478 (1967).

His greatest contributions to the jurisprudence of the Supreme Court touched on what he saw as the essence of the liberties guaranteed by the Constitution, the procedures used by the criminal justice system. In addition to numerous opinions on the Fifth Amendment, he wrote, in the case of *In re Gault*, 387 U. S. 1 (1967), the charter of juvenile justice. He was acutely sensitive to the constitutional and procedural rights of minors, not only those charged with breaking the law as in *Gault*, but also those who wished to criticize public policy, *Tinker v. Des Moines School District*, 393 U. S. 503 (1969), and those who sought to learn more than one-sided orthodoxy, *Epperson v. Arkansas*, 393 U. S. 97 (1968). And he pleaded that the First Amendment had room to protect individuals and families from the loss of their legitimate privacy. *Time, Inc. v. Hill*, 385 U. S. 374, 412 (1967).

Abe Fortas' tenure on the Supreme Court embraced a period in which the law and its future were called into open question not only in the courtroom but also in the streets. Although he invested remarkable energy and industry in his court work, he could not ignore what he viewed to be multiple threats to the law and to its basic organizing principles for society. In 1968 he published a pamphlet which he had begun before he joined the Court, *Concerning Dissent and Civil Disobedience*. He argued that civil disobedience was sometimes appropriate, but that violence never was, because violence beget more violence and thus destroyed the opportu-

nities for peaceful social change. The book was strangely misunderstood by some as a manifesto for lawlessness, but nothing could have been further from Fortas' purpose or belief. "Democratic processes do indeed function," the small book concluded, "and they can bring about fundamental response to fundamental demands, and can do this without revolution, and despite the occasional violence of those who either reject or have not attained the maturity and restraint to use, and not to abuse, their freedom. This is an extraordinary tribute to our institutions." To confound those who misread him, he elaborated his views in an address to the American College of Trial Lawyers in August of 1968. "I say proudly that I am a man of the law," he began. He repeated his faith in the rule of law and his abhorrence of violence, but he also issued a warning: "We will not tolerate violence or lawlessness but at the same time we will protect and preserve—despite the onslaught of those whose purported adherence to constitutional principles conceals a danger to our institutions more virulent and dangerous than outright attack—the possibilities of peaceful and orderly change that our Constitution guarantees."

On June 27, 1968, President Johnson nominated Abe Fortas to be Chief Justice of the United States to replace Earl Warren, who had announced the day before that he would retire as soon as a successor was confirmed. The nomination never went to a vote in the Senate, because Fortas asked on October 3 that his name be withdrawn from consideration after stormy confirmation hearings where questions were raised about decisions made by the Court both before and during his tenure, about the pamphlet and about Fortas' extrajudicial activities. The following Spring further questions were raised which, it became evident, could not be laid to rest short of a full confrontation. To Fortas, the political implications of the controversy transcended personal vindication. He knew, as he said, that "if I stayed on the Court, there would be a constitutional confrontation that would go on for months. I feel that there wasn't any choice for a man of conscience." Against the urgings of friends and those who

recognized the importance of his contribution to the work of the Court, he resigned from the Court on May 14, 1969.

After the resignation, he resumed an active practice as an eminent and valuable member of the bar. The practice was remarkably varied, challenging and consuming. Of particular interest to him was the future of the Commonwealth of Puerto Rico, with which he had a long association and which he represented in his only argument before the Court after leaving it.

He continued his manifold activities on behalf of the arts, and he occasionally lectured. Although his work and his avocation seemed to fill a twenty-five hour day, he always had time for friends. During the illness that forced Justice Douglas to retire from the Court, and in the years following, Fortas was on hand at a moment's notice.

The life of Abe Fortas was so full, so rich, and lived at such intensity that it is possible we do not fully know the man we have lost. He recognized his own complexity. The Supreme Court, he said, "brings you face to face with the problems of what you really believe, and that accounts for some of the transformations of men on the Court. Maybe if I'd stayed on the Court long enough I'd have discovered a Fortas under the Fortas under the Fortas. But it didn't happen."

Abe Fortas was not so much a man of contradictions as a man of great tensions. An instinctive, emotional passion for justice and fair play underlay his quiet and controlled public reserve; the man who moved so easily in the corridors of power was acutely uncomfortable with the trappings of that power, so much so that he could not bear to ride in the back seat of a limousine alone, because he detested the distinction between the passenger and the driver that the seating arrangement symbolized; and the active and diverse social life that he and Carolyn so enjoyed was at odds with his lifelong gravity and social concern. Abe Fortas bore the burden of the same kind of conscience that he perceived in his friend and former partner Louis Eisenstein: "He believed in man and man's capability. He *believed*—although life could not have been easy for him, because he was a sensitive instru-



ment, responding too easily, too deeply, too quietly, too passionately to the vibrations of others—not only those whom he knew, whose sorrows impinged upon his life, but also to the unseen multitudes whose problems to him were not abstract, but a personal agony and a personal responsibility.”

We would not honor Abe Fortas properly, however, if our memory were cast only in sadness at his departure. As he said of Eisenstein, in that deep, deliberate, somewhat mournful voice which none who heard it can ever forget: “The death of a remarkable man is not just an end. It is also a beginning. His death does not terminate his life. His life continues in each of those whom he has touched, and in thousands whom he never encountered, but whose lives are better and richer because *he* lived.”

WHEREFORE, IT IS RESOLVED, that we, the Bar of the Supreme Court of the United States, express our grievous sense of loss upon the death of Justice Abe Fortas, that we acknowledge our professional debt to him for his accomplishments as a lawyer, public servant and public citizen, and that we gratefully recognize his enduring contributions to our profession, to the arts and to the nation: It is further

RESOLVED, that the Chairman of our Committee on Resolutions be directed to present these resolutions to the Court with the prayer that they be embodied in its permanent records.

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THE CHIEF JUSTICE said:

Thank you, Mr. Solicitor General. The Court now recognizes the Attorney General of the United States.

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Mr. Attorney General Smith addressed the Court as follows:

MR. CHIEF JUSTICE and may it please the Court.

The Bar of the Court met today to honor the memory of Abe Fortas, Associate Justice of the Supreme Court from 1965 to 1969.

Justice Fortas came to this Court after two extraordinary decades in the private practice of law. He was the first lawyer appointed to the Court directly from private practice in 35 years. He brought to the Court not only the habits of mind of the outstanding private practitioner, but the deeply felt concerns that shaped his own life.

As a young man, Justice Fortas came to Washington with the New Deal. He served with distinction at the Agricultural Adjustment Administration, the Securities and Exchange Commission, and the Department of the Interior—where he became the Under Secretary at 32.

From 1946 until 1965, Justice Fortas engaged in the private practice of law—founding his own firm, which became an exemplar of the Washington practice. During this period, however, Justice Fortas did not forsake public service. He demonstrated the importance of the lawyer to the service of the public through his representation of a broad range of clients. By appointment of the United States Court of Appeals for the District of Columbia Circuit and this Court, he successfully represented indigent clients in two historic cases. In the latter instance, he made an important contribution to the work of this Court. In 1962, the Court appointed him to brief and argue the cause of Clarence Earl Gideon, a destitute Florida convict. The story is well known. And it is a story that will continue to tutor future generations of law students and lawyers concerning their responsibilities to the public as members of the bar.

Justice Fortas' keen intellect, and his intolerance for obscure arguments, were apparent both in his opinions and in the courtroom. One of Justice Fortas' law partners has said that it was a dangerous gamble to answer a question from him unless it could be done with certainty, and that no one gambled more than once. Those who argued before him quickly learned the same lesson. If there was a weakness in a lawyer's argument, it was often Justice Fortas who would question the advocate about it—and not let him easily escape. The advocate's only consolation was that when his opponent was making a questionable point, it was again Justice Fortas

who would often ask the incisive question and pursue the issue relentlessly until the weaknesses of the argument were fully revealed.

Although a member of this Court for less than four years, he played a central role in the significant changes wrought during that period. He wrote forty opinions of the Court during those four terms. Although considered by most a stalwart of the Warren Court, he revealed the nuances of judgment that characterized his superb intellect by writing twenty-one concurring opinions and forty-five dissents. On this Court—as in private life—Mr. Fortas was his own man—indeed, a most remarkable man whose unique insights were the result of exceptional experience, hard work, and a sharp intellect.

After leaving the Court, Justice Fortas returned to the private practice of law, and to a diverse life in which he devoted much of his time to public service. He gave generously of his efforts to the John F. Kennedy Center for the Performing Arts and to the National Endowment for the Arts. From 1970 until his death he was a member of the Advisory Committee on Appellate Rules of the Judicial Conference of the United States. His law practice once again led him back before this Court, where he presented another memorable oral argument only two weeks before his death.

President Theodore Roosevelt once said that in life, "The credit belongs to the man . . . who knows the great enthusiasms, the great devotions, and spends himself in a worthy cause . . . ." Abe Fortas was such a man. Throughout his life—which spanned a turbulent era of change—Justice Fortas proved himself a brilliant lawyer and a tireless advocate for his clients and those principles he cherished. In public service and in private life, he spent himself fully for those things in which he believed. Those who agreed with him, and those who did not, all recognize that Justice Fortas was always a magnificent advocate—and so often a successful one.

MR. CHIEF JUSTICE, on behalf of the lawyers of this nation and, in particular, of the Bar of this Court, I respectfully



request that the resolutions presented to you in honor and celebration of the memory of Justice Fortas be accepted by this Court.

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THE CHIEF JUSTICE said:

Mr. Attorney General and Mr. Solicitor General, the Court thanks you on behalf of the Bar for your presentations today in memory of our late colleague and friend, Justice Fortas.

We ask that you convey to Chairman Koven and the members of the Committee on Resolutions our profound appreciation for these very appropriate resolutions. Your motion that these resolutions be made a part of the permanent records of the Court is granted.

These resolutions of the Bar of the Court that you have presented, Mr. Solicitor General and Mr. Attorney General, reveal a man who, for all his skills as an advocate and for all his fine professional standing as a lawyer and as a Justice of this Court, was far more than a legal technician.

There's very little to add to the resolutions you have presented in terms of Abe Fortas' career as a Justice, as a lawyer and as a public figure. In many respects, he was cut of the same cloth as so many of those Eighteenth Century figures in our history who were as much at home in the corridors of government as in the courtroom or in the concert hall. His services in government, as the resolutions have told us, began very early in his life, and very soon won him national recognition.

He was always vigorous in his support of or in his opposition to measures and to people when he disagreed. His public rebuke of Senator Wayne Morse can really be appreciated best by the generation who remember Senator Wayne Morse as one of the powerful figures in the Congress of the United States, and as a leading spokesman for liberal causes.

Few people cared and even fewer dared to cross swords with Wayne Morse in public debate. And Abe Fortas' courageous opposition to the internment of Japanese Americans that has been referred to in the resolutions was another

example of his willingness to oppose popular trends, including the entire force of President Roosevelt's administration.

I first became personally acquainted with Abe Fortas when I served on the Court of Appeals and worked with him on Circuit Judicial Conference Committees. He had returned to private practice by the time I came to this Court, and when we reactivated the important Judicial Conference Committee to review the appellate rules, I asked him to serve on it and he accepted.

In private conversations with him, I found that he shared the view that judges and lawyers had a great obligation to work together to reduce the steadily mounting costs of appeals as cases became more complex and as the cost of printed records sometimes ran into literally small fortunes. Here his quick grasp of the realities, his vast experience in the law made him a very valuable contributor to the work of that Committee.

Abe Fortas was deeply involved, as the resolutions have indicated, in the political life of the country much of his life, especially in the earlier years. But one could not accurately say he was a politician, as that term is commonly used in Washington. He was surely no hail fellow well met. He saved his warmth for his friends and his close associates. Yet, he played an important role in the political life on the level of ideas and issues, beginning with the stirring days of the New Deal.

One can easily visualize Abe Fortas as counsel to the truculent Harold Ickes, seeking to restrain the public outbursts of that dynamic curmudgeon, as the Solicitor General's resolution has described him, in order to protect the Secretary and enhance his effectiveness in government.

Abe Fortas' role in the political life of his times was largely on an intellectual level, as I have suggested. And as with any advocate, he performed with great zest and vigor on behalf of the young Lyndon Johnson in the Texas litigation that the Solicitor General has referred to. And, of course, we know the result of that case was to place Lyndon Johnson on

the ballot for United States Senator and open his national political career.

I have said that Abe Fortas was as much at home in the corridors of government as in the courtroom, but that description fails to describe the complete man. From his childhood, he loved music and he never did forsake his beloved violin. Yet, it would have been unnatural for a fine musician, possessing the great talent that he exhibited, to confine his interest in the arts simply to music. Quietly and effectively he supported many causes of the arts on a broad scale, notably, the Kennedy Center, and it was his participation, at the request of President Johnson, that led to the Smithsonian Institution acquiring the great Hirshhorn collection—and that was an essential step, for the project was not without vigorous opposition.

The Solicitor General has referred to the final appearance of Abe Fortas as an advocate in this Court, and that came shortly before his death. That was the kind of case that called for his large grasp of the realities and the practicalities of the business of government, as well as an acute understanding of the relevant law. A unanimous Court found in favor of Puerto Rico, one of his long-time clients.

Those who knew Abe Fortas as a cool, if not sometimes even a cold, steely advocate in the competitive arenas of the law and of government would have been somewhat baffled, I think, to have seen him as part of a string quartet with his musician friends in a private home. These groups, as the resolutions have noted, sometimes included some of the leading figures in the world of music, Isaac Stern, Judith Serkin, Leonard Rose.

Abe Fortas was as much at home with the music of Brahms, Mozart and Rachmaninoff as with the treatises of Lord Coke and of Maitland.

Although he was a very private person, he did not make a point of concealing his love for and the practice of music or his interest in the arts. Neither did he flaunt it or exploit it. His love of the arts was a sincere expression and it tells something about the breadth of the man and of his interests.



I was present, as many of you were, at the musical memorial tribute in May at the Eisenhower Theater when some of the great artists of America paid tribute to this man with their music. We heard Isaac Stern, Slava Rostropovich and others who had shared private musical evenings with him. They played the Andante Movement from Mozart's String Quintet, one of Abe Fortas' favorites. It was their way of paying tribute to an Eighteenth Century man of the arts who was also a Twentieth Century man of the Law.

Abe Fortas will be missed, not just by his life companion, Carolyn, and by his family and his friends and colleagues at the Bar, but by all those who have tried to make our Nation's Capital a center for the beauty and serenity so essential today in the turbulent world that we live in.

In a day of specialists and specialization, he will be remembered for his contributions on many levels. As his love of the arts and music enriched his life, it served also to enrich the life of this great city and of our country.