

# NOMINATION OF ABE FORTAS

1700-7

## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE EIGHTY-NINTH CONGRESS

FIRST SESSION

NOMINATION OF ABE FORTAS, OF TENNESSEE, TO BE AN  
ASSOCIATE JUSTICE OF THE SUPREME COURT  
OF THE UNITED STATES

AUGUST 5, 1965



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**SENATE**

**110th CONGRESS**

**2d Session**

**COMMITTEE ON THE JUDICIARY**

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## METHODS

### Sample Preparation

The samples were prepared by dissolving the dried, powdered plant material in 95% ethanol. The solution was filtered through a Whatman No. 1 filter paper and the filtrate was collected. The filtrate was then concentrated under reduced pressure until it became a thick, dark brown slurry. This slurry was then dried in a vacuum desiccator over calcium hydride.

### Extraction

The dried, powdered plant material was extracted with 95% ethanol. The extraction was carried out in a Soxhlet apparatus for 2 hours. The extract was then concentrated under reduced pressure until it became a thick, dark brown slurry. This slurry was then dried in a vacuum desiccator over calcium hydride. The dried extract was then weighed and dissolved in 95% ethanol. The concentration of the extract was determined by titration with a standard iodine solution. The extract was then used for the determination of total phenolics.

## NOMINATION OF ABE FORTAS

THURSDAY, AUGUST 5, 1965

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C.

The committee met, pursuant to notice, at 10:35 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland of Mississippi (chairman of the committee) presiding.

Present: Senators Eastland, McClellan, Ervin, Dodd, Hart, Long of Missouri, Kennedy of Massachusetts, Burdick, Smathers, Dirksen, Hruska, Fong, Scott, and Javits.

Also present: Senators Gore and Bass.

Also present: Joseph A. Davis, chief clerk.

The CHAIRMAN. Let us have order.

The hearing this morning has been scheduled for the purpose of considering the nomination of Abe Fortas, of Tennessee, to be an Associate Justice of the Supreme Court of the United States.

Notice of this hearing was published in the Congressional Record of July 28, 1965.

Senator Gore, by formal notification, approves the nomination.

Senator Bass, by formal notification, approves the nomination.

By letter of July 29, 1965, the standing committee on Federal judiciary, of the American Bar Association, states it is of the opinion that the nominee is highly acceptable from the viewpoint of professional qualification.

By letter of August 3, 1965, the Bar Association of the District of Columbia—  
considers the nominee highly qualified to serve as a Justice of the Supreme Court of the United States.

At this point I will place in the record a letter from Gen. Alfred Gruenther endorsing the nominee.

(The letter referred to follows:)

WASHINGTON, D.C., August 3, 1965.

DEAR SENATOR EASTLAND: It is my pleasure to recommend Mr. Abe Fortas who has been nominated by the President for the Supreme Court vacancy.

I have had an opportunity to know Mr. Fortas reasonably well during the past 15 months. His ability is outstanding; his integrity is unquestionable. I am confident that he will serve our country with great distinction.

Respectfully,

ALFRED M. GRUENTHER,  
General, U.S. Army (Retired).

The CHAIRMAN. Senator Gore.

**STATEMENT OF HON. ALBERT GORE, A U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator Gore. Mr. Chairman and gentlemen of the committee, it is with particular pride and personal pleasure that I have the honor to present to you, along with my distinguished junior colleague, and to endorse for your consideration Mr. Abe Fortas, the nominee for Justice of the U.S. Supreme Court.

Mr. Fortas has climbed the ladder of both personal achievement, professional attainment, and public service in the arduous traditional manner but most successfully and eminently.

If confirmed for the U.S. Supreme Court he will be the only member of that Court appointed from the practicing bar.

He is a lawyer of skill and ability, a former public official of integrity and devotion, a personal friend of many years.

It is, let me repeat, a pleasure and an honor to present him to you, and I ask unanimous consent to place in the record certain biographical material and a few selected editorials with respect to the nominee.

The CHAIRMAN. So ordered.

(The information referred to follows:)

**BIOGRAPHICAL INFORMATION, ABE FORTAS, JULY 1965**

Fortas, Abe, Lawyer, Government official; born at Memphis, Tenn., June 19, 1910; son of William and Ray (Berson) Fortas; A.B., Southwestern College, Memphis, 1930; LL. B., Yale, 1933; editor in chief, Yale Law Journal; married Carolyn Eugenia Agger, July 9, 1935. Assistant professor of law, Yale, 1933-37; Assistant Chief, Legal Division, AAA, 1938-34; Assistant Director, Corporate Reorganization Study, Securities and Exchange Commission, 1934-37; consultant, 1937-38; Assistant Director, Public Utilities Division, 1938-39; General Counsel, Public Works Administration, 1939-40; Bituminous Coal Division, 193-41; Director, Division of Power, Department of Interior, 1941-42; Undersecretary of Interior, 1942-46; member, law firm of Arnold, Fortas & Porter, Washington, D.C.; Acting General Counsel, National Power Policy Committee, 1941; member, Board of Legal Examiners, Civil Service Commission, 1941-43; member, President's Committee To Study Changes in Organic Law of Puerto Rico, 1943; adviser to U.S. delegation to United Nations, San Francisco, 1945; London, 1946; visiting lecturer on law, rank of professor, Yale University, 1946-47; member, Federal, American, FCC Bar Association; Phi Beta Kappa, Order of the Coif, Omicron Delta Kappa. Contributor to legal and other periodicals. Home: 3210 R Street NW; Office: 1220 19th Street NW, Washington, D.C.

Director: Federated Department Stores, Inc.; SuCrest Corp.; Greatamerica Corp.; Madison National Bank, Washington, D.C.; the Franklin Life Insurance Co., Springfield, Ill.; Braniff Airlines.

Trustee: Carnegie Hall Corp., Carnegie Hall International, Washington Gallery of Modern Art, William Alanson White Psychiatric Foundation, John F. Kennedy Center for the Performing Arts, Festival Casals, Inc., American Judicature Society.

Member of the Visiting Committees on the Law School, University of Chicago; overseer of the College of the Virgin Islands; member of the President's Committee on Equal Opportunity in the Armed Forces; member, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States; member of various committees of the Judicial Conference of the District of Columbia circuit; member of the National Citizens' Committee for Community Relations; member of the Advisory Committee on Free Press-Fair Trial (American Bar Association); member of the Advisory Committee, Project on Social Welfare Law; member of the Advisory Council, School of Advanced International Studies, Johns Hopkins University.

**EXCERPTS FROM EDITORIAL COMMENTS ON THE APPOINTMENT OF HON. ABE FORTAS AS ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES**

Chattanooga Times, July 29, 1965:

"He [Fortas] approaches the responsibilities of the High Court with a fine legal education, recognized scholarship in the field (he holds the rank of professor at the Yale Law School for his intermittent lecturing there), a varied practice which encompasses the corporate great as well as the indigent appellant, and a deep knowledge of the workings of the National Government from first-hand experience.

"Mr. Fortas has been in Washington since the early 1930's. As one of the rising young attorneys of the era, he ran the gamut of service in the relief and regulatory agencies created by the New Deal. In recent years, he has used his partnership in a highly successful law firm in Washington as the base for various advisory missions at the White House level.

"In 1948, he was legal counsel for his friend, Lyndon Johnson, in the latter's hairbreadth victory in a contested election for the U.S. Senate. If one had to guess where Mr. Johnson's real gratitude to Abe Fortas has its origin, it would be this service; it opened the door to all that has followed.

"Mr. Fortas is a recognized liberal in his political and economic philosophies, although his clients include large business interests; his concern for the rights of the individual is epitomized in his successful handling of the *Gideon v. Wainwright* appeal which established the constitutional right of counsel in State trials. He took the case as counsel appointed by the Supreme Court.

"But, if his appointment changes the Court's complexion at all, it may be in the conservative direction. For he has a deep commitment to the rule of law in the affairs of freemen and an understanding of the Court's role in our Government."

New York Herald Tribune, July 29, 1965:

"For his first appointment to the Supreme Court Mr. Johnson chose a lawyer of unquestioned ability, widely known, and highly thought of throughout the legal profession. The Supreme Court itself has repeatedly demonstrated its respect for Abe Fortas, choosing him, for example, to argue the *Gideon* case in 1963, with all its far-reaching implications for the administration of criminal justice. From the standpoint of letting nothing get in the way of choosing the best man, the appointment merits high marks."

New York Times, July 29, 1965:

"After a brilliant career at the Yale Law School, he was a notable protege at the Securities and Exchange Commission of his old professor and new colleague, Justice William O. Douglas. At 32, he was an effective Under Secretary of Interior to that rigorous taskmaster, Harold L. Ickes.

"During the past two decades, in which he has built an immensely successful private practice on behalf of important corporate clients, Mr. Fortas has also found time to take cases in the public interest. He argued and won the *Durham* case, in which the Court of Appeals for the District of Columbia significantly liberalized the definition of criminal insanity. He was the Court-appointed defense attorney in the *Gideon* case, in which the Supreme Court ruled that State courts had to provide indigent defendants with counsel in criminal cases. Mr. Fortas has also been a trenchant critic of the excesses of congressional investigations and of abuses of the Federal Government's loyalty-security programs. \*\*\*

"On the difficult issues of criminal procedure which the Court in recent years has been reexamining—such as prompt arraignment, the use of confessions, and the right to counsel—he can be expected to strengthen the libertarian approach of the Court's majority. On all issues, Mr. Fortas' intellectual and professional attainments augur well for a significantly useful career on the Supreme Court."

Washington Post, July 30, 1965:

"The great strength of Mr. Fortas, who has for long been the President's intimate legal adviser, lies in the breadth of his experience and accomplishments. A brilliant law student and for a time a teacher at the Yale University Law School, he went on to a precociously successful career in the Government, first with the Securities and Exchange Commission and then as Harold L. Ickes' Under Secretary of the Interior. \*\*\*

"Whether judged by his intellectual capacity, his legal experience, or his deep concern over civil liberties and civil rights, Mr. Fortas is admirably equipped to

take his place on the Court, and there is every reason to believe that he will serve it with great distinction."

*Philadelphia Bulletin, July 30, 1965:*

"Some of the special talents of Abe Fortas, nominated by President Johnson for the U.S. Supreme Court, may be obscured by the fact that he is an old friend of the President's.

"The friendship cannot be overlooked, of course. It will make uneasy those who cherish the sharp division between the branches of Government which is a fundamental tenet of the Constitution. But, fortunately, Supreme Court Justices have tended to become markedly independent once on the bench.

"Mr. Fortas, by all accounts, is a brilliant and courageous lawyer. He has had experience in the high councils of the executive branch (as No. 2 man in the Department of the Interior under Harold Ickes); he has taken on unpopular cases in support of defendants' rights and won notable victories in the Supreme Court; he has been a teacher of the law.

"The American Bar Association rates him as 'highly acceptable from the viewpoint of professional qualification.'

"\* \* \* another tradition—also hallowed by time \* \* \* is appointing brilliant men to the highest Court. This tradition appears to have been fully kept in the case of Mr. Fortas."

[From *Time* magazine, Aug. 6, 1965]

#### THE SUPREME COURT

##### *Lawyer and friend*

In the heady early days of Franklin Roosevelt's administration, two young southern liberals came together in Washington and discovered the first bond of friendship. One went on to carve out a brilliant career in politics; the other rose to the top of the legal profession and successfully argued two landmark cases in U.S. criminal law. Last week the politician of that pair, Lyndon Johnson, put the Presidential seal on the friendship of 30 years by naming the lawyer, Abe Fortas, as his first appointee to the U.S. Supreme Court.

**The Qualifications.**—Justice-designate Fortas, 55, has a remarkable set of qualifications for the high office. He helped put himself through Southwestern College in Memphis by playing the violin at dances. From Southwestern he went to Yale Law School,<sup>1</sup> where he won the coveted editorship of the *Yale Law Journal*. His record at Yale was so outstanding that he was appointed an assistant professor immediately after graduation in 1933, commuted from New Haven to Washington for 4 years on New Deal assignments before taking a full-time Government job in 1937. He became Harold Ickes' Under Secretary of the Interior in 1942 when he was only 32.

Fortas left the Government in 1946 to become a law partner of ex-F.D.R. trustbuster Thurman Arnold. The two were joined by former Federal Communications Commission Chairman Paul A. Porter, and the firm of Arnold, Fortas & Porter emerged as one of Washington's top legal offices.

Between corporate assignments, Fortas labored with intense dedication on non-remunerative civil-liberties cases. In the early 1950's, he successfully defended Johns Hopkins Scholar Owen Lattimore on charges of perjury. (Lattimore, testifying before a Senate committee, denied supporting Communist causes.) In 1954, Fortas persuaded the U.S. Court of Appeals for the District of Columbia to broaden the definition of legal insanity in the light of psychiatric knowledge, a decision that is still reverberating through the courts. In 1962, the Supreme Court picked him to appeal the celebrated *Gideon* case; he argued brilliantly and induced the Court to rule that any citizen, no matter how humble he was, or how guilty he seemed, had the right to legal counsel, even if the State had to pay the fee.

There is even a family side to Abe Fortas' devotion to the law. His wife, Carolyn, who was his student when he was teaching at Yale, is now a member of his firm and is one of Washington's shrewdest tax lawyers. Husband and wife together draw an estimated \$200,000 to \$225,000 a year, drive a 1958 Rolls-Royce to their office in a converted Victorian mansion, are now moving to a \$250,000 house in Washington's Dumbarton Oaks area.

<sup>1</sup>With Fortas' appointment, the Supreme Court will take on a decided Elling, Justices Potter Stewart and Byron White also attended Yale, and Justice William O. Douglas was a member of the faculty before he joined the New Deal. No other law school can claim more than 1 of the Court's 9 Justices.

*The friendship.*—The sinews of friendship between Abe Fortas and Lyndon Johnson are about as deep and strong as possible. In 1948, when Johnson's election to the U.S. Senate was challenged, it was Fortas who acted as his counsel and held the seat despite charges that the 87 votes by which Johnson won the primary were stolen from the opposition. When Johnson became President, one of the first men he called to his side was Fortas. The new President consulted Fortas on appointments, departmental problems, national and international policy, and the creation of the Warren Commission to investigate the assassination of John F. Kennedy. He worked out the complex trust to manage the Johnson family's Texas holdings during Lyndon's Presidency.

The depth and importance of the friendship was shown in another way last October. When Walter Jenkins, President Johnson's longtime friend and aid, was arrested on a morals charge, it was to Fortas that Jenkins first turned for help. Fortas, along with fellow Washington Lawyer Clark Clifford, then tried to get Washington newspaper editors to hold off breaking the story of Jenkins' arrest.

It was clear that Fortas preferred to play his role outside public office. Johnson had tried to bring him into a high Government office at least once before. In September 1964, the President offered him the post of Attorney General, to replace Robert F. Kennedy. Fortas turned down the job. But the offer of a seat on the High Court was one that Fortas could not turn down; he had said before, in describing his relationship with Lyndon Johnson, "He gives me the honor of having some confidence in my discretion and experience in law and government."

As a New Deal stalwart, a student and longtime friend of liberal Justice Douglas, Fortas is expected to maintain the Court's current liberal, activist majority—with a special interest in civil liberties. His approach can be expected to differ only in degree from that of Arthur Goldberg, whose seat—the so-called Jewish seat—he takes on the Court. But Fortas will bring with him to the bench a special problem. His long and intimate friendship with the President and his handling of some of the more difficult episodes in the Johnson catalog will be constantly remembered. That means that both political and nonpolitical eyes will carefully scrutinize his every move on the Bench.

#### APPOINTMENTS—MR. JUSTICE FORTAS

"Come on over and attend today's press conference," coaxed Lyndon Johnson over the telephone. "I'm going to be making a statement on Vietnam." Sitting in the workroom of his law firm's red brick Victorian mansion off Washington's Dupont Circle one morning last week, Abe Fortas dutifully put aside a brief he planned to submit to the Supreme Court in the fall. As it turned out, LBJ had more in mind than Vietnam troop movements. By the time the news conference ended, the case Lawyer Fortas hoped to take to the Court was forgotten: Fortas was going there himself.

#### FEAT

Even by the Great Persuader's own exacting standard, the conversion of LBJ's most trusted confidant and hard-hats man into Mr. Justice Fortas was something of a feat. From the first days after Dallas, Lyndonologists had confidently predicted that the slight, fastidious Fortas, now 55, would be the President's choice for the first vacant seat on the Supreme Court Bench. But Fortas, content in the lucrative center of Washington influence, denied interest in any Federal post (including the proffered Attorney Generalship). Sure enough, when the President offered Fortas the seat vacated by Justice Arthur Goldberg—just hours after inducing Goldberg to move to the U.N.—Fortas refused.

White House staffers and Mr. Johnson himself accepted Fortas' decision—or so it seemed. But after unenthusiastically scanning a list of alternate nominees supplied by the Justice Department, LBJ decided to appeal the verdict. Less than a half hour after the call from the White House last week, Fortas was in the presidential presence and the treatment commenced. "I'm sending 50,000 boys to Vietnam," said LBJ in his patented resolution-melting Johnson style. "I want you to go to the Supreme Court."

It worked. Without even pausing to call his wife or colleagues, Fortas followed the President into the East Room and took an inconspicuous seat until the tele-

vision lights flashed on him as Mr. Johnson intoned "• • • in this instance the job has sought the man." Back at Arnold, Fortas & Porter, Mrs. Fortas—who as Carolyn Agger heads the firm's busy tax division—learned the news along with the rest of America.

#### THE REASON

Some Johnson watchers were surprised that acquiescence came so hard from a man who has always been eager to serve Mr. Johnson. But Fortas' friends explained his reluctance on that very basis; he feared that his appointment would smack of government-by-crony.

The Memphis-reared Fortas has unquestionably been the President's most influential intimate outside the White House. The son of a Jewish cabinet-maker, junior bureaucrat Fortas first met Lyndon Johnson in the early days of the Roosevelt New Deal. By the end of World War II, Fortas had risen to prominence as Harold Ickes' right-hand man at Interior. Then he left the Government to set up practice with two celebrated FDR alumni; Trustbuster Thurman Arnold and Price Administrator Paul Porter. In 1948 Fortas won a key court ruling that paved the way for LBJ's first Senate victory and he has been Mr. Johnson's trouble shooter ever since.

#### HANDYMAN

Bobby Baker? Fortas' firm defended him (until the assassination). The Warren Commission? Fortas set up the design. The Johnson family TV trust? Ditto. And when Walter Jenkins faltered and fell on the eve of the election, it was Fortas who arranged for his hospitalization, went to the hospital to seek his resignation and urged Washington newspapers to withhold news of the scandal.

Yet, Fortas has had a distinguished career of his own. A meticulous legal craftsman ("He would rework the Lord's Prayer if it came in a brief," says one intimate), Fortas has drawn a swarm of distinguished clients (among them: the Commonwealth of Puerto Rico, Philip Morris, Lever Bros.). He sits on the boards of several corporations and banks and is a renowned specialist in corporate cases before appellate courts and regulatory agencies. This big-money practice has earned him a Rolls-Royce and an art-laden Georgetown home, where Fortas, a near-professional violinist, indulges a consuming passion for chamber music.

But there has been another side to success. During the McCarthy era it was Fortas' firm that defended Owen Lattimore and other headlined "security risks." And as an unpaid Court-appointed attorney, Fortas argued the case for Clarence Earl Gideon, which led to the Supreme Court's landmark right-to-counsel rule for penniless defendants.

Fortas has no judicial experience. But Justice William O. Douglas—one of Fortas' teachers at Yale Law School—has been his judicial mentor and the new Justice is expected to fit right into Goldberg's spot in the Court's five-man activist bloc. In fact, may be more effective than Goldberg. "He'll think longer about the same problem, and come up with the same answers more carefully framed," says one scholar.

Inevitably, there were Republican predictions that Fortas would be little more than a Johnson tool on the Court. But those who know the new Justice—and the history of the Supreme Court—consider it hardly likely. Indeed, Fortas himself dealt with the question a year ago in the Yale Law Journal. "For a Justice of this ultimate tribunal," he wrote, "the opportunity for self-discovery and the occasion for self-revelation are usually great. Judging is a lonely job in which a man is, as near as may be, an island entire. The moment is likely to come when he realizes that he is, in essential fact, answerable only to himself."

**The CHAIRMAN.** Senator Bass.

#### STATEMENT OF HON. ROSS BASS, A U.S. SENATOR FROM THE STATE OF TENNESSEE

**Senator Bass.** Mr. Chairman, I am happy to join my distinguished senior colleague in having the honor this morning of presenting to you a former Tennessean, and we consider still a Tennessean, who I

am sure is no stranger to the members of this distinguished committee or to the Members of the Senate.

After spending his youth in Memphis, Tenn., he left in 1930 to attend Yale Law School and established such an excellent record there that he was appointed an assistant professor upon graduation.

During that period of time, the complexion of Government within our Federal system was undergoing a transformation, and this young professor, and a Tennessean, participated actively in a number of different positions to assist President Roosevelt's program.

Leaving the Government he entered the private practice of law and embarked upon not only a successful but a distinguished legal career. His legal talents served not only the lucrative clientele but served those who could ill afford an attorney.

In fact, one of his most noteworthy cases was *Gideon v. Wainwright*. In that case he served as a Court-appointed counsel for an indigent client who because of his indigency had been denied the right of counsel at his trial. The Supreme Court ruled in favor of the defendant and established the constitutional right of a defendant to counsel in State criminal trials.

Mr. Chairman, I take great pleasure in presenting to this committee Mr. Abe Fortas, unqualifiedly endorsing him and urging his confirmation to the position of Associate Justice of the Supreme Court of the United States.

The CHAIRMAN. Any questions?

Senator McCLELLAN. No.

The CHAIRMAN. Mr. Fortas, there are other witnesses to testify. Would you sit up here?

Mr. FORTAS. Yes, sir.

The CHAIRMAN. Mr. Sidney S. Sachs.

#### STATEMENT OF SIDNEY S. SACHS, VICE PRESIDENT, THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

Mr. SACHS. Mr. Chairman and members of the committee, I have the pleasure of coming to report that the Bar Association of the District of Columbia considers Mr. Fortas to be highly qualified for the post for which he has been nominated. He has been a member of the association since 1950 and an active member, and we are delighted about his nomination.

The CHAIRMAN. Thank you, sir.

Senator McCLELLAN. Just a moment. May I inquire? You say you are appearing in behalf of the bar association. What is your connection with it?

Mr. SACHS. I am the vice president, sir.

Senator McCLELLAN. Very well.

The CHAIRMAN. Mr. Anderson? Lionel Glenn Anderson.  
(No response.)

The CHAIRMAN. George Lincoln Rockwell.

(No response.)

The CHAIRMAN. Marjorie Shearon.

Senator DIRKSEN. Mr. Chairman, all these people you named requested to be heard?

The CHAIRMAN. Yes, sir.

Just give your name, please.

**STATEMENT OF MARJORIE SHEARON, EDITOR, CHALLENGE TO SOCIALISM, SHEARON LEGISLATIVE SERVICE**

Miss SHEARON. Mr. Chairman, I appreciate this opportunity to appear before your committee. My name is Marjorie Shearon, the editor of Challenge to Socialism. I live in Chevy Chase, Md. And I am appearing in the public interest and not on behalf of any organization or for any group.

I shall read a part of my testimony, which you have before you, but I will summarize the rest in the interest of saving time. I hope that you will put the entire testimony into the record together with the two exhibits I have given plus the short statement as to my professional competence. Would you be kind enough to do that?

The CHAIRMAN. Yes; it will be ordered in the record.

Miss SHEARON. And the exhibits. Thank you very much.

The CHAIRMAN. It is a pretty long statement.

Miss SHEARON. I said I would summarize it.

The CHAIRMAN. Yes.

Miss SHEARON. I will read a part of it and summarize the rest.

In appearing before you today, it is my purpose to present certain documented material pertaining to the qualifications of Mr. Abe Fortas for a seat on the Supreme Court. While there is a considerable body of evidence in connection with Mr. Fortas' activities in the past, I shall confine myself to two areas only. One set of evidence is already part of the public record, having appeared in the hearings and reports of the House Un-American Activities Committee. This I have summarized for your benefit because the volume of testimony and reports heard and published by that House committee and by your own committee is so extensive that few Members of Congress are likely to have had the time to read it all and to have correlated the factual material presented. The other set of evidence which I shall give to you has been assembled by myself over the past 30 years and is not fully a part of the public record.

One of the most awesome tasks which a President must perform is that of appointing a member of the Supreme Court. The man thus elevated to the highest Court in the land will have to interpret our Constitution and will leave his imprint on decisions affecting not only those of us now living, but generations yet unborn. The man appointed should be of unquestioned integrity and honesty. His lifelong activities, his professional associations, and his dedication to American ideals and to our Constitution are all matters of concern to the public and to you who must pass on his fitness.

Surely you will agree with me that the man whom you approve should have an unblemished record of probity. His dedication to the public good, his devotion to duty, and his professional discipline should shine forth for all to see at all times. There should be no periods in his life when he sowed political and ideological wild oats or when allegiance to the philosophy and goals of alien countries took precedence over allegiance to the United States.

It matters not how brilliant and clever a man may be nor how useful he may have been to the President and to others in high places if his public record is tarnished by activities ill befitting a public official.

in the service of the Government of the United States. Professional brilliance and mental ability are no substitute for integrity, especially on the high courts.

Abe Fortas was born in Memphis, Tenn., on June 19, 1910. He received his L.L.B. degree from Yale in 1938 and was at once appointed assistant professor of law at Yale.

Now, you have his history before you and I need not go into it. I would point out that he came to the Agricultural Adjustment Administration in 1932, and he was their Assistant Chief of the Marketing Division. In the next 10 years he had nine jobs in the Federal Government, moving from one agency to another. And you may read the record at the top of page 2, as I have given it, and you probably already know it.

Now, it was during this period of service in the Federal Government that Abe Fortas became a member of the International Juridical Association, and many of you know that; younger members of the committee may not know it and perhaps the public does not know too much about it, nor the other Members of Congress if they have not made a specialty of studying un-American activities as I have done for many years.

Now, the IJA, the International Juridical Association, was an organization of lawyers, which was founded in the United States in 1931. It had a strong interlocking directorship with the Communist-controlled International Labor Defense which had been organized after the Communist International in Moscow in 1922 had instructed all Communist Parties to "establish an organization to render material and moral aid to the imprisoned victims of capitalism." And that is a quotation.

The International Juridical Association became very active in the defense movement, the defense of Communists and of the Communist Party, and it attracted, we are told in the year book of the International Labor Defense in 1936-37, that the IJA had attracted the leading attorneys of the United States in the field of labor law, and has succeeded to a remarkable extent in coordinating research and organizing legal assistance to labor groups.

The American section of the International Juridical Association declared its purpose to be at that time to combat and resist increasing executive, judicial, legislative, and administrative oppression; to support the defense of political prisoners especially in the courts, and those prisoners generally turned out to be prisoners who were to be deported or who were said to be Communists or who were known to be members of the Communist Party and who had come afoul of the laws of these United States, and they appealed to the International Juridical Association for help, and they got it.

Now, since Mr. Fortas was a member of the 61-man national committee of the International Juridical Association, it becomes of importance to you and to the public to know that 8 of the 61 members were publicly avowed or approvable Communists. Now, these were not people who were loosely called Communists and about whom there was any doubt. They were people who had helped to found the Communist Party in this country in 1919. They had been active for a long time, and when the International Juridical Association was formed it was

very natural for them to come into it because this was the international organization of lawyers which had been set up by Moscow to defend Communists in various countries when they got in trouble, and I might say that there was a branch in China in the Far East way back in the 1920's and 1930's, and this is very significant at this time.

Now, I have printed in bold face type to enable you to read more easily the names of these well-known Communists, and they include Isaac E. Ferguson, who was tried and convicted on a charge of criminal anarchy and received a sentence of 5 to 10 years in the State prison in New York. Now, he was a member of this national committee of the IJA.

Joseph R. Brodsky, whose Communist affiliations have gone back, went back for a long time. He is dead now, but he was a member of the committee, appeared as the attorney of the Communist Earl Browder, the secretary of the Communist Party, and of William Z. Foster, the chairman of the Communist Party, when they were subpoenaed to appear before the House Un-American Activities Committee. It was Brodsky who was their attorney.

Then there was Yetta Land. She was the State chairman of the Communist Party in Ohio.

The fourth Communist on the International Juridical Committee was Mauricio Sugar, whose Communist record goes back to the beginnings of the Communist Party in this country, and I have stated there considerable amount about him, his endorsement by the Communist Party, and when he sued a man for libel for having called him a Communist he lost the suit. He was convicted and served a prison term as a draft dodger during World War I.

Then there was David J. Bentall, the fifth one, and he was a chairman of the Division of the Friends of Soviet Russia and a candidate for office of attorney general, on the Communist ticket, in Illinois, Senator Dirksen.

Senator DIRKSEN. I have not even heard of him.

Miss SIEARON. Well, Senator Dirksen, that is exactly the point. You see, you have not heard of him, and I wonder how many other members of the committee have not heard of him either, nor the press.

Senator DIRKSEN. We only have 10½ million people.

Miss SIEARON. Pardon me?

Senator DIRKSEN. We only have 10½ million people. I do not know all of them.

Miss SIEARON. Well, there have been many Communists, you know. Then there was Leo Gallagher. He was another Communist. He was on the party ticket in California.

And there was John P. Davis, and so on.

Now, we come to Nathan Witt, and I think that name is more familiar to many of you. If you have read Whittaker Chambers' *Witness*, if you have read the testimony of Elizabeth Bentley, if you have sat in any of the prolonged hearings of the House Un-American Activities Committee or the hearings of your own committee, the name of Nathan Witt is not unknown. He was a member of the Ware-ABT-Witt Communist apparatus described by Whittaker Chambers and Elizabeth Bentley. He was an attorney on the staff of the Agricultural Adjustment Administration in 1933-34 at the time that Abe Fortas entered that same administration.

Another Communist, John J. Abt of this Ware-Abt-Witt apparatus, was also an AAA attorney in 1933, and he became Assistant General Counsel of the Works Progress Administration--this is Abt I am talking about—and then he moved over to the Securities and Exchange Commission in 1938, the very time that Abe Fortas after graduating from the AAA in 1934 was serving as consultant to the Securities and Exchange Commission.

Mr. Fortas, as we have seen, moved up in the Securities and Exchange Commission to be Assistant Director of the Public Utilities Division in 1936 and 1938, while John J. Abt was being brought in to prepare a case against the Electric Bond & Share Co.

Now, let us go back a little into the history of Harold Ware. He was a very interesting man. In 1925 he went to Russia to study farming and when he came back to the United States a little later he brought a gift of \$25,000 from Moscow from the Communist International to organize in this country an apparatus to penetrate the Federal Government, and he was extremely successful, and if you have not read Whitaker Chambers' description of Harold Ware and how he proceeded from a little man in a dollar a year job in 1925 in the AAA in the Department of Agriculture, do read it. It is illuminating about how things happened in this country, and we are all concerned, considering our situation in the world today.

Well, now, Ware, as I say, came in with this rather small amount of money, but it represented more back in 1925, and he proceeded to organize and in 1933 he really set up a reservoir in the Agricultural Adjustment Administration, to which he attracted young lawyers from Harvard and Yale and other professional people, too, but they were mostly lawyers. And after a short time in the Agricultural Adjustment Administration in 1933 these lawyers fanned out through the Government. They showed up in the next decade in the State Department, the Labor Department, the Social Security Administration, the Railroad Retirement Board, the Securities and Exchange Commission, and any number of the really, all of the important Government agencies and this is a matter of public record in your reports and in the reports of the House Un-American Activities Committee and also in Whitaker Chambers' book where he has listed the Harold Ware committee, as he calls it, that is the Ware-Abt-Witt group.

The CHAIRMAN. Now, Miss Shearon, where does the nominee fit into this Ware Committee?

Miss SHEARON. Well, I am just pointing out the fact that he was in Ware's—shall we say, on the staff then with Ware. He is not in the Ware-Abt-Witt group, no, he isn't. No. He was just in with Ware's staff group in the AAA in 1933.

The CHAIRMAN. Was he a member of the Ware Committee that you are talking about?

Miss SHEARON. No, not at all.

The CHAIRMAN. What has that got to do with the nominee?

Miss SHEARON. Well, if your powers of deduction do not make it have anything to do with you then it probably doesn't. Now—

Senator McCARTHY. The inference here is that there may have been some people in Government at some times in some agency of Government that were Communists and pro-Communists; somebody else

working in the same agency, or department, necessarily; their attitude and opinion would not necessarily be imputed to someone else.

Miss SHEARON. I think if you put that fact in juxtaposition with the fact that Mr. Fortas was a member of the 61-man national committee of the International Juridical Association, specialized in fighting the cases of Communists, I think it is significant now.

Senator McCLELLAN. There may be some connection. But just the fact that somebody worked in a department down here in Government where there happened to be a Communist some 20 years ago—

Miss SHEARON. No, no, Senator McClellan, it is much more than that. Here you have a training center in the AAA in 1933 which was training lawyers to go through the Government and they went out, and Abe Fortas was there in the AAA that very same year with Harold Ware, and he went through nine different jobs.

The CHAIRMAN. Lady, I am not trying—

Miss SHEARON. I am asking you to ask the questions, not me.

The CHAIRMAN. I say I am not trying to quarrel with you. I am trying to understand what you say.

Miss SHEARON. Yes.

The CHAIRMAN. The point you make is that there was a Ware Committee of which Mr. Fortas was not a member.

Miss SHEARON. Not a member; that is correct.

The CHAIRMAN. But he associated with people who were members of the Ware Committee. Now, is that what you are saying?

Miss SHEARON. Yes. Yes. That is correct. And now, then, you see this Ware-Abt-Witt Committee had on it Nathan Witt, who was a member of the 61-man international juridical national committee. In other words, Nathan Witt, who has been identified and is known as a member of the Ware-Abt-Witt Communist apparatus was on this international juridical top association along with—now, this is definite—this is along with Mr. Fortas. There is no imagination about that. Fortas was not on the Ware-Abt-Witt, the small group. There were about 10 or 12 lawyers in there, including Alger Hiss, Nathan Witt, Donald Hiss, and Victor Perlow was also on an espionage group. The interlock in here between, and this is all pointed out by Whittaker Chambers—I am not imagining this—the interlocks between the groups that were set up by Ware to penetrate the Federal Government with lawyers who were Communists or favorable to communism and also the interlock with the espionage groups which were sending documents to Russia and were acting as espionage agents, it is something I think that this committee should investigate, should inquire into, should ask some questions about it.

Now, having given that much about—I want to go over to another organization which most unfortunately has not been investigated by your committee or by the House Un-American Activities Committee. I understand that there is evidence that it was organized by a Communist, but I do not have the proof. However, in that committee, and it was the Committee for the Nation's Health, about 200 persons got together in December 1945, and they published a large ad and their names were all given and the ad was circulated—a big ad like this (indicating) and those 200 persons incorporated as the Committee for the Nation's Health, Inc., on February 28, 1946.

Now, I have given—I did not have enough copies or photostats to go around—it is expensive getting photostats, and I do not have a lot of money.

Senator Hruska, I gave you a copy of the letterhead of the Committee for the Nation's Health. I did not give you a copy, Senator McClellan, but that is a letterhead dated April 12, 1946, and it gives the charter members of this Committee for the Nation's Health, and it included Abe Fortas, who later became a member of the board of directors of this committee. Also—

Senator McCLELLAN. Will you permit me to ask you one question?

Miss SHEARON. Yes.

Senator McCLELLAN. This is to get this thing properly oriented. As I understand you contend Mr. Fortas as a member of the International Juridical Association as a member of that along with some 61 members of it—

Miss SHEARON. That is correct.

Senator McCLELLAN (continuing). That included these 8 or 10 Communists that you referred to—

Miss SHEARON. That is correct.

Senator McCLELLAN (continuing). Who were engaged in these other activities, and your contention is that Mr. Fortas is bound to have known of those activities and thus he voluntarily associated with them as a member of the International Juridical Association; is that your contention?

Miss SHEARON. That is my contention.

Senator McCLELLAN. All right.

Miss SHEARON. And, of course—

Senator McCLELLAN. I just wanted to get the record straight as to what your contention was.

Miss SHEARON. That is my contention, and you have a copy of names—

Senator McCLELLAN. All right.

Miss SHEARON (continuing). Of those 61 members, and I have marked the Communists. I have also marked the interlocking directorate, you see. But this other committee, which is a much smaller thing—

Senator McCLELLAN. Proceed from there. I just want to get this straight now.

Miss SHEARON. I feel this, Senator McClellan, that a man who is as clever as Mr. Fortas is said to be, and I am sure that that is generally agreed upon, that he could not have voluntarily associated himself with a committee, with Communists, many of them going back right at the beginning of the Communist Party, and not have been aware of what he was doing, and I could not have been and I am nowhere near so smart.

Senator Hruska. Miss Shearon, may I ask you a question at that point? You say Mr. Fortas could hardly be aware of what he was doing. What was he doing?

Miss SHEARON. It seems to me that this page on the International Juridical Association, the membership of that 61-man committee—

Senator Hruska. Then what he was doing was being a member of these different committees; is that what you are saying?

Miss SHEARON. No. He was a member of the International Juridical Association, the object of which was to protect Communists when they got into trouble with the laws of the United States.

Senator HRUSKA. I understand that.

Miss SHEARON. That was his object, and they did, year after year after year, case after case after case, defending Communists, and he was in the top, he was in the top policy committee.

Senator HRUSKA. I understand that, Miss Shearon. I know what their objectives were. I did read some of this material. But you refer to what Mr. Fortas was doing. Now what was he doing?

Miss SHEARON. I haven't the slightest idea.

Senator HRUSKA. Yet it must have been something bad, is that your conclusion?

Miss SHEARON. Well, I will tell you, Senator Hruska, I think you would think it was something bad if you belonged to a committee with a lot of Communists on it. I think that a great many people would think it was very bad—a committee, mind you, the objectives of which were to protect Communists when they got in trouble with the laws of the United States and, of course, it was a part of the international conspiracy they started from Moscow, and they had a branch over in China, and it was all around the world, international, and it was stated by them that they agreed to the principles and purposes that the American branch agreed to the principles and purposes of the international branch. So, I think that it is kind of an unfortunate thing.

Now, this Committee for the Nation's Health had 168 charter members, 92 of whom had Communist-front connections. You know that is a very high percentage.

Now, I have been studying this membership of the Communists, interlocks of the members of the committee for 20 years and I just scratched the surface of the Communists, connections of the members of that committee.

Now, Abe Fortas was a charter member and also was on the board of directors in 1950.

The CHAIRMAN. Miss Shearon.

Miss SHEARON. There are two other persons I want to speak of that were charter members along with Abe Fortas.

The CHAIRMAN. Miss Shearon.

Miss SHEARON. Yes.

The CHAIRMAN. Senator Dodd is present. He is a member of the Senate and he is entitled to testify.

Miss SHEARON. Yes.

The CHAIRMAN. We are going to let you finish your testimony a little later now.

Miss SHEARON. A little later. That will be just fine.

The CHAIRMAN. About how much longer have you, ma'am?

Miss SHEARON. About 5 or 6 minutes. I want to speak about two other persons.

The CHAIRMAN. Go ahead.

Miss SHEARON. All right.

On this Committee for the Nation's Health among the charter members was Carol Weiss King. Her name ranges back through the Communist Party activity and she was the secretary of the International

Juridical Committee, and was said to have been the most influential person on that committee. Now, remember, so she was on the International Juridical Committee and she was a charter member of the Committee for the Nation's Health. Now, Carol Weiss King has quite a record. She was the law partner of the Communist Brodsky, and she also specialized in Communist cases, and you may possibly recall in 1951 the Saturday Evening Post had a very illuminating article on Carol Weiss King and the lead picture in that article showed her leading the Communist Gerhardt Eisler up the gangplank of the SS *Batory* to help him to escape from the United States because he was under indictment. She got him out. And he is now in Communist Germany still operating.

The other person was Agnes Smedley. She was born in Missouri in 1894 and started traveling in Europe and Russia in the twenties. She arrived in China in 1929. There she became an agent for the Far Eastern Bureau of the Central Committee of the Third (Communist) International. Now, remember, she was a charter member of this Committee for the Nation's Health along with Abe Fortas.

And I refer you there to the long story of Agnes Smedley's Communist activities as a Soviet-American spy. That has been written up by Maj. Gen. Willoughby in his "Shanghai Conspiracy," and there is a tremendous amount of information in the House Un-American Activities Committee on her activities in China.

She came back to the United States in the early forties and did some lecturing, and she joined some Communist fronts and she joined the Committee for the Nation's Health, which is the one that had these 92 members, charter members with subversive records.

Now, she died in 1950 and she left her ashes to Red China, and they are buried in the new cemetery for revolutionists.

And she was on this committee, along with Abe Fortas.

That same year on that same board of directors there was Nelson Cruikshank, Arthur Goldberg, Jacob Potofsky, the president of the International Ladies Garment Workers Union, Emil Rieve, president, Textile Workers Union of America, and Samuel I. Rosenman. These are on page 5 of my testimony. You can read the testimony.

It has been said, in summary, that there was not a single important Communist-front organization—I am quoting—which does not have a substantial representation from the personnel of the International Juridical Association on its governing body. And you might also say the same thing for the Committee for the Nation's Health. It interlocks between the members and the officers of that committee, penetrates out through all the Communist fronts in this country, and as I say I have been working 20 years on it and merely scratched the surface.

My testimony must indicate to you that Mr. Fortas has been significantly connected with Communists and Communist fronts over a considerable period of time. His connections were neither trivial nor casual and I doubt if they were innocent. One can hardly believe that a man so brilliant and so clever as Mr. Fortas is said to be could have joined with so many Communists and fellow travelers without knowing what he was doing. He held responsible Government posts. Yet simultaneously he served on an organization which was part of an international Communist conspiracy. The prestige of his Federal

position must have led the more gullible to believe that the objectives of IJA were laudable, or benign.

It can hardly be argued that Mr. Fortas was unaware of the well-known Communist antecedents of the men who had helped to found the Communist Party in this country in 1919. This was ancient history by 1933. And one cannot help wondering about the fact that Mr. Fortas went to the Agricultural Adjustment Administration 1933 at the very time that Harold Ware was attracting bright young lawyers to the AAA for the purpose of indoctrination before sending them out through the Government agencies to establish Communist cells. These young attorneys moved quickly from agency to agency, rising rapidly to positions of trust and also to positions where they could influence national policy here and abroad.

And they came right into the Senate committees, as you well know, the Education and Labor Committee, Senator Pepper's Committee on Health. He had Charles Cavitski who masqueraded under the name of Cramer. He was on Pepper's committee. And Nathan Witt and John Abt, they all got into Senate committee staffs before going out elsewhere.

Now, Mr. Fortas identified himself with the labor movement and the defense of Communists. Today we are reaping the results of union activity around the world 20 years and more ago, especially in China and Vietnam. One must dig back into the historical foundations to discover the reasons for today's tragedies, wars, and international unrest. And we should look well at the man who laid the cornerstones 20 to 25 years ago.

I close by repeating that an appointee to the High Court should have an unblemished personal and professional record. He should have integrity, high purpose, and a demonstrably unfaltering dedication to constitutional government. Brilliance and cleverness are no substitutes for virtue, uprightness, and patriotism.

#### MARJORIE SHEARON

Scientist, lecturer, editor, and legislative consultant, Dr. Shearon was formerly consultant to the late Senator Robert A. Taft (1945-47) and to the Senate Labor Committee.

In July 1947 she began publishing a weekly paper on Federal welfare-state legislation, now known as *Challenge to Socialism*.

An opponent to state socialism and communism, she has testified before congressional committees and published numerous pamphlets against the nationalization of medicine.

Prior to her service as a Senate consultant, she spent nearly a decade in the executive branch of the Government, 5 years with the Social Security Administration and 4½ years with the U.S. Public Health Service.

Dr. Shearon holds a Ph. D. degree from Columbia University, is a past fellow of several scientific societies, and a member of Phi Beta Kappa and Sigma Xi.

In addition to publishing *Challenge to Socialism*, Dr. Shearon operates the Shearon Legislative Service, preparing research reports and furnishing consultative services.

Dr. Shearon is the author of—

"Economic Insecurity in Old Age" (1937).

"Blueprint for the Nationalization of Medicine—Plans to Enchain Medicine by Unwarranted Regulative Interference" (1947).

"Old Doc Truman's Pink Pill—Administration's Plans to Socialize Medicine" (1951).

"Testimony on Appointment of Wilbur J. Cohen To Be Assistant Secretary of the Department of Health, Education, and Welfare," March 1961, 49 pages.

"Saskatchewan's Embattled Physicians," 1962, 88 pages.

**TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE ON THE APPOINTMENT OF  
ABE FORTAS TO THE SUPREME COURT, MARJORIE SHEARON, EDITOR, AUGUST 5, 1965**

I appreciate this opportunity to appear before your committee. My name is Marjorie Shearon and I am the editor of Challenge to Socialism, a paper which I publish weekly while Congress is in session. I appear here today in the public interest and not as the representative of any group or organization. I came to Washington in 1935, spent nearly a decade in Government service and then became a consultant on social security and compulsory health insurance to the late Senator Robert A. Taft from 1945 through 1947. At the same time I was consultant to the Republican policy committee and briefly to the Senate Committee on Education and Labor prior to starting my paper on July 2, 1947.

In appearing before you today, it is my purpose to present certain documented material pertaining to the qualifications of Mr. Abe Fortas for a seat on the Supreme Court. While there is a considerable body of evidence in connection with Mr. Fortas' activities in the past, I shall confine myself to two areas only. One set of evidence is already part of the public record, having appeared in the hearings and reports of the House Un-American Activities Committee. This I have summarized for your benefit because the volume of testimony and reports heard and published by that House committee and by your own committee is so extensive that few Members of Congress are likely to have had the time to peruse it all and to have correlated the factual material presented. The other set of evidence which I shall give to you has been assembled by myself over the past 80 years and is not fully a part of the public record.

One of the most awesome tasks which a President must perform is that of appointing a member of the Supreme Court. The man thus elevated to the highest Court in the land will help to interpret our Constitution and will leave his imprint on decisions affecting not only those of us now living, but generations yet unborn. The man appointed should be of unquestioned integrity and honesty. His lifelong activities, his professional associations, and his dedication to American ideals and to our Constitution are all matters of concern to the public and to you who must pass on the fitness of the appointee.

Surely you will agree with me that the man whom you approve should have an unblemished record of probity. His dedication to the public good, his devotion to duty, and his professional discipline should shine forth for all to see. There should be no periods in his life when he sowed political and ideological wild oats or when allegiance to the philosophy and goals of alien countries took precedence over allegiance to the United States.

It matters not how brilliant and clever a man may be nor how useful he may have been to the President and to others in high places if his public record is tarnished by activities ill-befitting a public official in the service of the Government of the United States. Professional brilliancy and mental agility are no substitute for integrity, especially on the High Court.

Abe Fortas was born in Memphis, Tenn., on June 19, 1910. He received his LL.B. degree from Yale in 1933 and was at once appointed assistant professor of law at Yale. Simultaneously he came to Washington to work part time in the Department of Agriculture. There, in 1933, he became Assistant Chief of the Marketing Division of the Agricultural Adjustment Administration. The following year he moved to the Securities Exchange Commission where he became a consultant in 1936-37, rising to the post of Assistant Director of the Public Utilities Division, 1937-38. His Yale professorship came to an end in 1937. In 1938 he became General Counsel of the Public Works Administration and of the Bituminous Coal Division, (1939-41). He next moved to the Interior Department as Director of the Division of Power (1941-42) and as acting General Counsel of the National Power Policy Committee in 1941. In June 1942 he became Under Secretary of the Department of the Interior.

Now it was during part or all of his period of service in the Federal Government that Abe Fortas became a member of the International Juridical Association and served on its 61-man national committee, which included Prof. Thomas J. Emerson, of Yale Law School. The IJA was an organization of lawyers which was founded in the United States in 1931. It had a strong interlocking directorship with the Communist-controlled International Labor Defense which had been organized after the Communist International in Moscow in 1923 had instructed all Communist parties to "establish an organization to render material and moral aid to the imprisoned victims of capitalism."

The 1936-37 Yearbook of the International Labor Defense states:

"The International Juridical Association which \* \* \* had led in the field of labor legal research in the United States, in 1936 contributed to the defense movement. \* \* \* It has attracted to its membership and its national committee the leading attorneys of the United States in the field of labor law, and has succeeded to a remarkable extent in coordinating research and organizing legal assistance to labor groups."

From its inception the International Juridical Association specialized in the defense of Communists and of the Communist Party itself. In the preamble of the constitution of the IJA we find:

"The American Section of the International Juridical Association subscribes to the declaration of principles of the International Juridical Association.

"Present America offers the example of a country discarding traditions of liberty and freedom, and substituting legislative, administrative [administrative?] and judicial tyranny. This country, once known to the world as the haven of refuge to oppressed people now excludes, or deports, those daring to voice unpopular opinions; with a constitution supposed to protect freedom of expression, it now persecutes and imprisons its political dissenters. \* \* \*

"The American section of the IJA declares its purpose to be as follows:

"To combat \* \* \* and resist increasing executive, judicial, legislative, and administrative oppression. \* \* \* To support the defense of political prisoners especially in the courts. \* \* \* To rally the support of workers and their organizations \* \* \* against the forces of the state whenever the latter aligns itself on the side of special privilege. To help establish in this country and throughout the world social and legal justice." (Investigation of Un-American Propaganda Activities in the United States, Special Committee on Un-American Activities, 78th Cong., 2d sess., appendix, pt. IX, Communist-Front Organizations, 1944, p. 804). [Emphasis ours.]

Since Mr. Fortas was a member of the National Committee of the IJA, the composition of that committee becomes important. Of the 61 members, 8 were publicly avowed or provable Communists, to wit (exhibit 1):

1. Isaac E. Ferguson, one of the charter members of the Communist Party of the United States. He was one of seven members of the executive council of the Communist Party of America at the time of its inception. "He was tried and convicted on a charge of criminal anarchy and received a sentence of 5 to 10 years in the State prison in New York."

2. Joseph R. Brodsky was identified as a Communist by several witnesses appearing before the House Un-American Activities Committee. He appeared as the attorney for Earl Browder, general secretary of the Communist Party, and William Z. Foster, chairman of the Communist Party, when they were subpoenaed to appear before the Un-American Activities Committee. There is documentary evidence that Brodsky was the payoff man of the Communist International for receiving money in the United States for the Communist Party. He was at one time treasurer and member of the executive board of the Communist International Workers Order.

3. Yetta Land, State chairman of the Communist Party in Ohio.

4. Maurice Sugar, whose Communist record goes back to the beginning of the Communist Party in this country. His candidacy for public office in Detroit was always endorsed by the Communist Party and he was affiliated with many Communist fronts such as: the John Reed Clubs, the National Negro Congress, the Friends of the Soviet Union, the International Labor Defense, and the Communist Party's Workers Schools in Detroit and Cleveland. In 1939 Sugar brought a suit for libel against a man who accused him of being a Communist. He lost the suit. He was convicted and served a prison term as draft dodger during World War I.

5. David J. Bentall. In 1928 he was a candidate for office of attorney general on the Communist ticket in Illinois and was chairman of the Chicago division of the Friends of Soviet Union.

6. Leo Gallagher in 1938 was candidate for the office of secretary of state on the Communist Party ticket in California.

7. John P. Davis denied he was a Communist, despite testimony to the effect that he was a party member who kept his membership secret. The Communist fronts in which he was active included: The American League for Peace and Democracy, the American Youth Congress, the Citizens' Committee To Free Earl Browder, the International Workers Order, etc.

8. Nathan Witt. He was a member of the Ware-Abt-Witt Communist apparatus described by Whittaker Chambers and Elizabeth Bentley. Witt was an attorney on the staff of the Agricultural Adjustment Administration in 1933-34 at the time Abe Fortas joined the AAA. The Communist John J. Abt was also an AAA attorney in 1933. He became Assistant General Counsel of the Works Progress Administration in 1935 and moved over to the Securities and Exchange Commission in 1936 at the very time that Abe Fortas, after graduating from AAA in 1934, was serving as consultant in the Securities and Exchange Commission. Now Fortas, as we have seen, moved up in the Securities and Exchange Commission to be Assistant Director of the Public Utilities Division (1937-38), while John J. Abt had been brought in to prepare the case against Electric Bond and Share Co.

Let us go back a little into the history of the Harold Ware group in the Department of Agriculture. Ware had gone to Moscow in the early 1920's to study farming and had returned to the United States in 1925 with a gift of \$25,000 from the Communist International. He found a niche for himself in the Department of Agriculture in 1925 and started to organize by assembling bright young lawyers and other professional men. Mostly lawyers.

Whittaker Chambers knew the Ware group. While it was not primarily an espionage group, but was dedicated, rather, to aiding in the dispersal of Communists throughout the Government and in pilfering documents to be conveyed to the U.S.S.R., still, Chambers noted that to his "personal knowledge, at least eight members of the group were sooner or later involved with a Soviet espionage apparatus as members or helpers." (Chambers, Whittaker, witness, 1962, p. 848.) Chambers continued:

"I can imagine no better way to convey the secret power of the Communist Party in the domestic policies of the U.S. Government from 1933 to 1948, and later, than to list the members of the leading committee of the Ware group and the posts that marked their progress through the Federal Government." (Ibid., pp. 343-345.)

Lawyers from Ware's AAA reservoir in 1933 spread all through the Government, turning up in the Treasury, State Department, Labor, Social Security, Railroad Retirement Board, Works Progress Administration, Office of Strategic Services, the Air Force, and even in the White House. John J. Abt found a place as chief counsel of a subcommittee of the Senate Committee on Education and Labor in 1936. Charles Krivitsky having left the 1933 AAA staff, joined the Ware-Abt-Witt Communist apparatus and also the Perlo espionage group, and moved on to the National Youth Administration in 1935. From 1936 to 1937 he was on the staff of the La Follette Subcommittee of the Senate on Civil Liberties and from 1945 through 1946 he was on Senator Pepper's Health Subcommittee on Education and Labor.

Lee Pressman, after, or while, serving in 1933 as Assistant General Counsel of AAA, became a member of the Ware-Abt-Witt apparatus and was promoted to General Counsel of the WPA in 1935. He left Government in 1936 to serve as general counsel of the CIO until 1948. John J. Abt became legal adviser to the CIO-PAO in 1944. (Gaer, Joseph, "The First Round," 1944, p. 227.)

In connection with Harold Ware's reservoir of attorneys in the AAA in 1933 and the fact that in that very year Abe Fortas, inexperienced and fresh from college, was made assistant chief of marketing in the AAA, I suggest to this committee that an exploration into the personal records of Mr. Fortas from 1933 to the termination of his Federal service in the 1940's might prove rewarding. It is amazing how much startling information sometimes shows up on application forms, civil service rating sheets, and transfer applications. The committee might be interested in the names given by Mr. Fortas as references and in who graded his work and signed transfers from one agency to another. Mr. Fortas had nine Federal jobs in 10 years. His employment pattern is similar to that of other attorneys who left the AAA pool to spread throughout the Government in the 1930's and 1940's.

Now I shall turn to my second set of documentation. It relates to a lobby known as the Committee for the Nation's Health, Inc. Organized in December 1945 and incorporated on February 23, 1946, it continued its operations for a decade. It was financed almost exclusively at first by unions, the larger contributors being the AFL, the CIO, the United Steelworkers of America, the International Ladies' Garment Workers, the Textile Workers Union, the International Machinists, etc. In a word, it was a strong lobbying arm of organized labor and was registered with Congress as a lobby.

Unfortunately, the Committee for the Nation's Health, Inc., was never investigated by your committee or by the House Un-American Activities Committee. The organization had 168 charter members, 92 of whom had subversive records (exhibit 2). The interlocking directorates between the CNH and the Communist fronts of the 1940's and 1950's were so extensive that I have been unable to do more than scratch the surface, though I have studied the interlocks for 20 years.

Those of you who are familiar with the names of Communists and of notorious Communist fronters will recognize the names of some of the charter members and of the officers of the Committee for the Nation's Health, Inc. I shall mention only a few:

Carol Weiss King, attorney, was a charter member of CNH. She was also a law partner of Communist Joseph Brodsky who, as we have seen, was on the national committee of the IJA along with Abe Fortas. The late Mrs. King was the secretary of the IJA and was described as "its most influential member." (HUAC report, loc. cit., 1944, p. 807.) She specialized in Communist cases. You may recall that it was Mrs. King who led Gerhardt Eisler by the hand up the gangplank of the SS *Batory* as he was fleeing immigration officials. To my certain knowledge, Mrs. King had 87 Communist activities citations, including membership in the National Lawyers Guild and the International Labor Defense.

While the total number of citations for the charter members of the Committee for the Nation's Health, Inc., runs into the hundreds, I shall mention only one other member—the Soviet-American spy, Agnes Smedley. Born in Missouri in 1894, she early traveled to Europe and Asia, reaching China in 1929 where she became an agent of the Far Eastern Bureau of the Central Committee of the Third (Communist) International, "receiving orders directly from the central committee in Moscow" ("Hearings on American Aspects of the Richard Sorge-Spy Case," HUAC, 1951, pp. 1218 ff. and Willoughby, Maj. Gen. Charles A. "Shanghai Conspiracy," 1952).

Meeting the Russian spy Sorge in Shanghai in 1930, Miss Smedley became his assistant and devoted the rest of her life, with a few intermissions, "to the political and geographical advancement of communism in China." In 1943 she returned to the United States and from 1945 through 1947 lectured in the United States, joined a number of Communist fronts and the Committee for the Nation's Health, Inc., and was a supporter of the National Writers-for-Wallace Committee. Her attorney was Carol Weiss King. When Agnes Smedley died on May 6, 1950, her ashes were sent to the Communist Chinese Red leader, General Chu Teh, commander in chief. In accordance with her wishes her ashes were placed in the "New Cemetery for Revolutionists" in Peking where her services were attended by 800 Chinese Red notables.

That was in 1950, the year the board of directors of the Committee for the Nation's Health, Inc., included:

Nelson H. Cruikshank, Social Insurance Department, AFL-CIO.

Abe Fortas, attorney, Arnold, Fortas & Porter.

Arthur Goldberg, general counsel, United Steelworkers of America.

Jacob Potofsky, president, International Ladies Garment Workers Union.

Emil Rlove, president, Textile Workers Union of America.

Samuel I. Rosenman, consultant to F.D.R. and Truman.

In brief testimony such as this, it is impossible to go into the ramifications of the interlocking directorates of the International Juridical Association, the Committee for the Nation's Health, Inc., and the great network of Communist fronts which have operated or are still operating in this country. It was said in 1944 that "there is not a single important Communist-front organization which does not have a substantial representation from the personnel of the International Juridical Association on its government body." Almost as broad a statement might be made about the Committee for the Nation's Health, Inc. Along with the eight Communists on the IJA national committee were six persons who later joined the Committee for the Nation's Health, Inc.

My testimony must indicate to you that Mr. Fortas has been significantly connected with Communists and Communist fronts over a considerable period of time. His connections were neither trivial nor casual and I doubt if they were innocent. One can hardly believe that a man so brilliant and so clever as Mr. Fortas is said to be could have joined with so many Communists and fellow-travelers without knowing what he was doing. He held responsible Government posts. Yet simultaneously he served on an organization which was part of an international Communist conspiracy. The prestige of his Federal position must have led the more gullible to believe that the objectives of IJA were benign.

It can hardly be argued that Mr. Fortas was unaware of the well-known Communist antecedents of the men who had helped to found the Communist Party in this country in 1919. And one cannot help wondering about the fact that Mr. Fortas went to the Agricultural Adjustment Administration in 1938 at the very time that Harold Ware was attracting bright young lawyers to the AAA for the purpose of indoctrination before sending them out through the Government agencies to establish Communist cells. These young attorneys moved quickly from agency to agency, rising rapidly to positions of trust and also to positions where they could influence national policy here and abroad.

Mr. Fortas identified himself with the labor movement and the defense of Communists. Today we are reaping the results of union activity around the world 20 years and more ago, especially in China and Vietnam. One must dig back into the historical foundations to discover the reasons for today's tragedies, wars, and international unrest. And we should look well at the men who laid the cornerstones 20 to 25 years ago.

I close by repeating that an appointee to the High Court should have an unblemished personal and professional record. He should have integrity, high purpose, and a demonstrably unfaltering dedication to constitutional government. Brilliance and cleverness are no substitutes for virtue, uprightness, and patriotism.

The CHAIRMAN. Senator Dodd?

Senator DODD. Yes; I have a statement. Would you prefer that I move to the witness stand?

The CHAIRMAN. It is up to you.

Senator DODD. I do not have any questions.

Senator LONG of Missouri. No questions.

The CHAIRMAN. That will be all. Thank you.

#### STATEMENT OF HON. THOMAS J. DODD, A SENATOR FROM THE STATE OF CONNECTICUT

Senator Dodd. Mr. Chairman, I have not sought any preference in order of testimony, but I am glad to testify not only as a member of the committee but as a Member of the Senate.

So I say, Mr. Chairman and my fellow members of the Judiciary Committee, that I take the greatest pleasure in endorsing the nomination of Mr. Abe Fortas to be a Justice of the Supreme Court of the United States.

Probably no other Senator has known Abe Fortas as long as I have. He and I were classmates at Yale Law School, where Abe's record of distinction foreshadowed the outstanding career in the law and in public service which has since been his.

So it has been with no small pride in his friendship that I have witnessed what must certainly be one of the most significant and distinguished careers in contemporary American life.

I have watched this man, this friend, who had to make his own way from a very early age, move from the peaceful and introspective grooves of legal professorship at Yale to the bustling arena of public administration in Washington.

In a career of exemplary public service commencing in 1937, Abe Fortas progressed to become Under Secretary of the Interior from 1942 to 1946.

He then left the Government to found a law firm now recognized and renowned for its ability and its devotion to the highest ideals of the legal profession.

No member of the bar more fully embodies those high ideals than does Abe Fortas.

His extraordinary competence has made him a counsel of Presidents.

His extraordinary compassion has made him a defender of the downtrodden.

The famous and the friendless have sought him out and in him they have found the help and advice they needed.

He has not feared to face the challenge of defending an unpopular cause against great hysteria.

He has defended the helpless and the hopeless cause and written new and marvelous chapters in American justice and jurisprudence.

His compassion, scholarship, and advocacy in the landmark case of *Gideon v. Wainwright* won the full protection of the law for all Americans, regardless of their status, by insuring that the poor will be properly represented in criminal cases.

So I say, Mr. Chairman and members of this committee, that the character and career of Abe Fortas epitomize the best in American life and the best in American law.

I heartily recommend prompt approval of his nomination to the Supreme Court.

The CHAIRMAN. Gentlemen, is there any objection to placing in the record a letter from the Liberty Lobby in opposition to the nomination?

The Chair hears none. It will be so ordered.

(The letter referred to follows)

LIBERTY LOBBY,  
Washington, D.C., August 4, 1965.

Chairman, Senate Judiciary Committee,  
Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: Liberty Lobby, a nonpartisan institution representing over 150,000 families in every State and congressional district in America, requested to appear in person to present testimony in opposition to the Senate's confirmation of the fixer, Abe Fortas, as Lyndon Johnson's choice to the Supreme Court.

We were deeply shocked at this appointment, feeling that by making it, Mr. Johnson reveals his contempt not only for the Supreme Court as the highest judicial body in our land and as a separate branch of government, but for the Senate and for the American people.

We shall not take up the time of your committee presenting evidence about Abe Fortas' leftist connections running back for many years. This material is to be found in the reports of this committee's Internal Security Subcommittee, and in the reports of the House Committee on Un-American Activities.

We shall not bother your committee with a résumé of Fortas' business connections with Lyndon Johnson and the help that he has been to him over a period of 30 years—not the least of which was his incredible attempt to suppress news coverage of Bobby Baker's stereo gift to the Johnsons, and of the arrest of Walter Jenkins, the sex pervert who was, and still is, a friend and business associate of Lyndon Johnson. These two incidents of Fortas' use of Executive power to interfere with freedom of the press bode ill for his future judicial attitude.

It is obvious to us that rubberstamp Senators will meekly accept anyone designated by Lyndon Johnson to the Supreme Court, no matter who. It is obvious to us and to the American people. And it is disgusting.

For these reasons we do not wish to suffer our dignity to the reproach of seriously protesting this charade.

We therefore respectfully withdraw our request to testify but ask that this Senator JAMES O. EASTLAND, letter be included in the report.

Respectfully,

K. J. CULLINANE, Research Director.

The CHAIRMAN. Mr. Charles Callas.

Mr. Callas, now, about how long will you want?

### STATEMENT OF CHARLES CALLAS, NEW YORK CITY

Mr. CALLAS. Sir, I have a brief statement to make and then I would like to give as many examples as I can, but that will be determined by your wishes, sir. I would like to mention at least two. That would take, perhaps, 15 minutes at the most.

May I begin, Senator?

The CHAIRMAN. Yes. Give us your background and state who you are.

Mr. CALLAS. My name is Charles Callas. I did serve as research assistant to the Internal Security Subcommittee of this committee during the Owen Lattimore hearings in 1952. My interest in those hearings occurred when I was working for Life magazine in 1950 on the business staff. I was not a reporter, and I came down and attended a meeting of the Tydings committee on the day that Louis Budenz testified to the fact that Owen Lattimore was known to him to be a member of the Communist Party.

There were a number of things that occurred that day that interested me enough so that for the following 2 years I made every effort to find out what I could about Owen Lattimore and many other Communists. My information was of value to this committee, and I was hired to serve during that period of time.

I would just like to add one other thing at this point. I have attempted from the very beginning to meet with Mr. Lattimore, which I did with Mr. Fortas, by telephone, at that point, and attempted to find out the answers to the questions that have long plagued me and later plagued many committees.

From that point, if I may, I would like to go on to this short statement, sir, if that is sufficient. Was that a sufficient background for you, sir?

The CHAIRMAN. Yes, sir.

Mr. CALLAS. I would just like to preface this, however, by the statement that Senator Dodd has made, whom I did not know. He was not on the committee when I was on it.

Senator Dodd. I did not hear that. What was that?

Mr. CALLAS. I am sorry, sir. When I was with the Senate Internal Security Subcommittee you were not with the committee.

Senator Dodd. I would put it another way and say when I was with it you were not with it.

Mr. CALLAS. That is right, sir. You correct me.

The CHAIRMAN. What year was that?

Mr. CALLAS. I have always felt very humble in front of Senators, sir.

The CHAIRMAN. What years were you with the Senate committee?

Mr. CALLAS. During the Owen Lattimore hearings, sir, which began in February of 1952 and I stayed on through June of 1952, that period of time.

The remarks that Senator Dodd has just made interested me because my knowledge of the workings of Mr. Fortas have upset me a great deal, and I would like to believe all these things. As a matter of fact,

even the other night I called Mr. Fortas and told him that I was going to appear here and asked if I could come and see him. Of course, he is busy and, as a matter of fact, I stopped by the Supreme Court on my way here and looked at the seat he might be in.

The Senate committee assembled here today to play its constitutional part in consenting to a Presidential nomination has an even greater responsibility than usual, for the nominee in question, Mr. Abe Fortas, has had contact with the committees of the Senate, while acting in the defense of a witness before those committees who has been charged with being a Communist. This, of course, is Owen Lattimore.

It is not the lawyer-client relationship which is the cause for my concern but rather the type of defense Mr. Fortas gave his client.

The records of two Senate committees will show upon investigation that Mr. Fortas exceeded every decent bound of advice to his Communist-accused client by deliberately deceiving the committees in numerous instances, for often it was what Mr. Fortas carefully shielded from the Senate what was important for the committees to know so that they could do their proper job of protecting the people of the United States from Communist adventurers.

The CHAIRMAN. Now you are going to list the instances in which—

Mr. CALLAS. I certainly am, sir.

The CHAIRMAN. Yes. Go ahead.

Mr. CALLAS. I will show this committee that Mr. Fortas knowingly set out to confuse and obscure the facts and that in doing so he used Communist aids, provided Communist witnesses, and depicted them as ex-Communists, and deliberately withheld pertinent data of a Communist source, and all this in order to destroy a bona fide ex-Communist who had dared to tell the Senate committee under oath that Mr. Fortas' client was a Communist.

The tenure of a Supreme Court Justice is for life. May I urge that the Judiciary Committee refer the matters of which I will speak to the Subcommittee on Internal Security so that a full determination of the purpose of Mr. Fortas in not aiding the Senate in their investigations can be made with all the proper safeguards that that subcommittee has always offered.

When that inquiry will have been completed there will then be no doubt as to the proper cause of action for the Judiciary Committee to take in this nomination. A few extra days now may save endless concern for those who, like myself, are at the moment more than anxious to see resolved the many questions that Mr. Fortas should be asked before his appointment is confirmed.

I will speak extemporaneously here, and I will try to make it as even as possible, Senator.

The two committees, of course, were the Tydings committee hearing in 1950 and the Senate Internal Security Subcommittee hearing in 1952, at both of which hearings Owen Lattimore was a witness.

The Tydings committee hearings that cleared Mr. Lattimore by a vote of three to nothing. Senator Hickenlooper, who is still with the Senate, did not join in the clearing but issued no separate statement. Senator Lodge, who was on the committee, arose on the Senate floor and denounced the committee's action, because he said there was an inadequate and fragmentary investigation.

Senator Dodd. Inadequate?

Mr. CALLAS. In the Tydings committee hearings.

Senator Dodd. Inadequate?

Mr. CALLAS. Pardon, sir.

Senator Dodd. I assume you meant inadequate. You said adequate.

Mr. CALLAS. I meant inadequate, sir. Yes. Thank you.

The Senate Internal Security Subcommittee, on the other hand, when it finished its investigation of Owen Lattimore, issued a statement on behalf of the seven members of the subcommittee in which they called Owen Lattimore a conscious, articulate instrument of the Communist conspiracy. There was no dissension.

There was one major difference between the Tydings committee hearing and the Internal Security Subcommittee hearings of this committee, and that was that this committee, the Judiciary Committee, subcommittee, had the files of Owen Lattimore, and the Tydings committee did not, although Owen Lattimore wrote in his book, "Ordeal by Slander," which he said was written with the aid of his attorney and good friend, Abe Fortas, that Mr. Fortas had turned all of his files over to the Tydings committee.

In instance after instance, as Senator Eastland sat there and knew, Mr. Lattimore had to retract again and again the fact that he had given certain information to the Tydings committee. They simply did not have it and could not have made any other determination than they did. It was not an adequate investigation, as Senator Lodge so correctly pointed out.

I would like to go to the heart now of my exact charges as I have named them here. Mr. Fortas deliberately withheld pertinent data of a Communist source. This was an instance in which Mr. Lattimore in rebutting testimony of Mr. Louis Budenz who had identified him as a Communist before the Tydings committee hearings offered in evidence a sealed envelope and suggested to the Senator and the chairman, Senator Tydings, that the envelope not be opened until it had been examined by the committee, and not laid out in the record. And then in his prepared statement he began to characterize the material that was supposedly in that sealed envelope. I have always imagined that then the committee should have opened the envelope. They did not.

What was in the envelope was the transcript of an immigration proceeding of a man named John Santo, who, as a result of the proceeding, was ordered deported and was deported to Budapest, Hungary.

I believe the chairman of this committee might have further information on Mr. Santo because he has escaped from Hungary and, as I understand, people have talked to him since.

Nevertheless, Mr. Louis Budenz, the chief witness against Mr. Lattimore was also the chief witness against Mr. Santo. The full text of this deportation proceeding will show that Mr. Budenz was found to be a truthful witness, but the Tydings committee was not told that in that envelope was any matter relating to communism or a Communist whatsoever.

When the matter came up before the Internal Security Subcommittee, as it did, the counsel and Senators of the subcommittee were quite interested in the fact of why it was put in a sealed envelope.

I would like to refer to that testimony. I am now quoting Mr. Abe Fortas before your subcommittee:

The character of the transcript was such that I concluded that it had a bearing upon Mr. Budenz' credibility as a witness, but it was also such that I concluded that I did not want to have anything to do with making it public. The reason for that again being that the transcript contained matters pertaining to Mr. Budenz' private life which I found to be quite distasteful but also quite relevant to the issue of Mr. Budenz' credibility, that being a legal judgment.

Now, Mr. Fortas later testified on a couple of pages later that the material had been handed to him by a fellow attorney friend of his named Mr. Joseph Fanelli who has also appeared as a lawyer before various committees. Mr. Fanelli testified before our committee in which I was also present that there was no reason that he knew that this had to be put in a sealed envelop because it was a public document, and, as a matter of fact, I went back into the files of the New York Times and discovered that on September 18, 1947, on page 9, column 7, and so forth, on the various days thereafter, all the material printed in the New York Times that Mr. Fortas did not want this committee to know about, he said he did not want to have anything to do with making it public. It had been public for 3 years.

As an attorney I think he owed it to the man who he was trying to defame to have double checked this and made sure that it was something like this. He was trying to destroy Mr. Budenz's credibility as a witness which as an attorney was a perfectly legal and wonderful think to do, but he used an unethical way to do it.

I think I have made my point on that.

There is a great deal of material on that Santo transcript which the gentlemen of the Senate might be interested in.

The next point I would like to mention is the charge that I say here he used Communist aid, provided Communist witnesses and depicted them as ex-Communists.

The night before the Budenz testimony Mr. Abe Fortas was in New York City and accompanied by a man named Wellington Roe. He was taken to the office of Dr. Bella Dodd who this committee

Senator Dodd. No relative by the way.

Mr. CALLAS. No, sir. I believe you and she are friendly, however, in her later testimony.

Dr. Bella Dodd, as this committee knows well, has given tremendous information on the Communist conspiracy to the FBI, to all Government agencies and certainly to this subcommittee of your committee. Dr. Bella Dodd when she appeared as a witness before the Tydings committee was asked if she ever provided information on the Communist conspiracy. She testified, "I do not know of any such conspiracy," because, gentlemen, in 1950 Bella Dodd was still a Communist.

Now, Bella Dodd knew Wellington Roe as one of her fellow travelers, saw him quite a bit, did not know of any appointment with Mr. Fortas until he walked into her office. She had been asked previously by Roe if she knew or had known Owen Lattimore and she told him that she did not. When Mr. Fortas came in the office he was obviously attempting to get information to help his client, again a commendable action, but when he sat down at her type-

writer and typed up the affidavit that he wanted her to give I think this exceeded the propriety of an attorney. That is your judgment to make as well as mine.

Senator Dodd. How?

Mr. CALLAS. Dr. Dodd—pardon, sir?

Senator Dodd. How did it exceed the right of an attorney?

Mr. CALLAS. I am sorry. I am trying to brief this as much as possible, but, Dr. Dodd—

Senator Dodd. That is common practice for lawyers to draft affidavits.

Mr. CALLAS. Dr. Dodd did not want to give an affidavit, Senator, and it was under the pressure of being told that she would be brought down as a witness if she did not that this was done. This is the important element here. Dr. Dodd, of course, did acquiesce to this. Of this, there is no doubt. She is an attorney herself, and she did acquiesce to it.

The affidavit said what Mr. Fortas wanted to say and did hope it would say; namely, that Dr. Dodd did not know Owen Lattimore. But then she was brought, subpoenaed, by the committee, by the Tydings committee. She was subpoenaed by the committee, anyway, even though she did not, even though she had given this affidavit in an attempt not to be.

Now, there is no record in the Tydings committee hearings that in any way, whatsoever, that would have us know that the Tydings committee knew that all this had been done through Mr. Fortas. But Dr. Dodd arrived in Washington in answer to the subpoena, sat in her hotel room where she was joined by a man named Palmer Weber, who had been identified before our subcommittee of this committee as a Communist in 1958 and again in 1960, and Palmer Weber guided her in a typewritten prepared statement which brought in all the points that would be very helpful to Mr. Fortas' client.

In this testimony which Senator Dodd has repudiated again and again in later testimony, and if I can recall again for you a moment she had said in this testimony that she didn't know of any conspiracy.

Senator Dodd. Wait a minute. You do not mean Senator Dodd.

Mr. CALLAS. I am glad you are here sir. I am sorry. Dr. Dodd.

Senator Dodd. Get the record straight. You are obviously not referring to me.

Mr. CALLAS. I am sure the reporter will handle it, sir, but I am sorry.

Senator Dodd. What do you mean?

Mr. CALLAS. Well, I do mean Dr. Dodd. You were not here at the time anyway, sir.

Senator Dodd. I hope you are more accurate about the rest.

Mr. CALLAS. Sir, I do not think that would have any bearing on the accuracy of my statement, sir. I think a slip of "senator" and "doctor" is easily made, especially when I am looking at the name "Dodd" in front of me. So I am very sorry. And I can assure you, sir, that if this testimony is not under oath I would like to have it under oath and it will bear scrutiny all the way down the line, as much of it has already borne scrutiny which resulted in your subcommittee having depicted Owen Lattimore as a constant, articulate instrument of a Soviet conspiracy.

I aided in that testimony, sir.

I am concerned now with the fact that Dr. Dodd said in this prepared statement that she knew of no conspiracy in the Communist Party. We now know, of course, that she did know of a Communist conspiracy and has related much material about it since.

But Mr. Palmer Weber then took Dr. Dodd over to Abe Fortas' office where they mimeographed this entire statement.

This is what I am trying to say here now, Senator, is that Mr. Fortas has a person accused of being a Communist as a client and it is a commendable thing that an attorney of standing would defend a man accused but it is far different if the committee does not know, when he does know, that the witness he brought there and saw to it that she got there was not an ex-Communist as she was pleaded before that committee. She at that moment had been about a year before expelled from the Communist Party in a dispute. She was still a Communist. Her testimony makes it clear that she was still a Communist, and an astute attorney as it has been said here many times today like Mr. Fortas owed it to his own conscience as well as informing the members of the Senate committee to have known this as well.

I believe that I can leave that point there. I think that I have stressed it enough so that you understand why I am bringing that matter up.

Senator Eastland, I have a couple of other matters I can talk about, but it is up to you, sir.

The CHAIRMAN. How long will it take, sir?

Mr. CALLAS. Well, I suppose I could go for 10 hours, sir, but, no, I mean, seriously, if you would like to have me bring up one more matter I would be glad to.

The CHAIRMAN. How long will it take?

Mr. CALLAS. Take another 5 minutes, sir.

The CHAIRMAN. All right, sir.

Mr. CALLAS. All right.

The other matter that I would like to bring up, and this goes to the temperament of Mr. Fortas, which I think is important for you to see in all of this, concerning the fact, and this happened, coincidentally, and interested me enough so that I am here today, 15 years later. I was in the hearing room on the day that Mr. Budenz testified and stated that he was told that in the Communist Party to regard Owen Lattimore as a Communist. Mr. Budenz' testimony was interrupted by Mr. Fortas. This is in the record, and it is also of my own memory—by Mr. Fortas saying that he had received in the mail that very morning—the hearing was at 10 o'clock or 10:30—he had received in the mail that very morning two documents that just had arrived from a source and that they concerned the matter which had just been introduced by Mr. Budenz which was an article that the professor had written that had appeared in Colliers magazine. Mr. Fortas said that he had a chance to write out some questions and wanted to know if the committee would answer those questions. This was an arrangement that was made with the committee that he could do so. And then Mr. Budenz was asked if he, of course, recognized the documents.

One of them was the rough draft of an article, of this article, rather, that was finally printed. The second document was a trans-

script of a story conference held with one of the editors while talking about the article. Mr. Budenz, as the chairman noted, as Senator Tydings noted, would have no way of identifying the transcript. The rough draft of the article, of course, he did recognize.

The significance of the transcript and the article was that in this rough draft Mr. Budenz had stated that two people who he had known were aiding the Communists, what would you say, the Red Chinese concept of communism in this article, and the Colliers editor was supposed to have said to him in the transcript, "Well, you are not saying they were Communists in any way," and Budenz was supposed to have replied "no, no, no," and, of course, this was used in effect to state that Mr. Budenz who had just stated that he knew Mr. Lattimore to have been a Communist had previously stated the reverse.

**Senator McCLELLAN.** Let me interrupt. What is wrong with that when somebody is on cross examination—

**Mr. CALLAS.** What?

**Senator McCLELLAN** (continuing). To say that they made a different statement.

**Mr. CALLAS.** No, sir. What I am getting at here now, Senator, is what I am about to tell you is how the material arrived there. I am just characterizing what it was for you, sir.

I was curious at the time, because Mr. Fortas then told the committee that he owed it to Colliers magazine to state that the material did not come from them and that was what he did say. As I sat there I was curious to know how it happened to arrive in the mail that morning, the usual question that would come to an inquiring mind.

I attempted thereafter, following the publication of the Tydings committee hearings late that summer and the publication of Owen Lattimore's book, "Ordeal by Slander," all of which became pertinent to the Internal Security Subcommittee investigation later, how this material got out of Colliers magazine.

All I can say is I have enough documents and letters from people at Colliers, the editors involved, and so forth, to the effect that nobody there had ever even seen this transcript. The editor who had handled something like 15 of the 16 conferences said he had never heard of such a thing as a story transcript to begin with, and I decided on November 1, 1950, to ask Mr. Lattimore. He was at Columbia University where I was taking courses and living in my fraternity house at Columbia, and I walked over and spoke to Professor Lattimore, and he stated that it was not anything that he handled, although he had written about it in his book, and so forth, he knew nothing about this other than the fact that it had been introduced and suggested that I contact Mr. Fortas.

I then called Mr. Fortas by telephone from my fraternity house and asked him. I had asked—pardon me—I asked Professor Lattimore's permission to call Mr. Fortas. He was his attorney. I talked to Mr. Fortas, left a message for him. He nicely called me back, and I asked him the question, having mentioned, of course, that I had talked to Professor Lattimore. He then characterized my question as rude and impertinent and, well, I can only say he treated me pretty badly

on the telephone, and I apologized for having called him and I said perhaps I was a little impetuous and perhaps I should have written a letter, and that was that until 15 minutes later when he called me back and said, "Mr. Callas, I am investigating you," et cetera, et cetera.

This, gentlemen, is what bothers me. I then went on and said: "Well, Mr. Fortas, you and your client wrote a book together in which you mentioned this." I said, "Don't tell me that I can't ask you a question. You wrote about it, I can ask you the question. You don't have to answer it. But don't tell me that I can't ask it."

Subsequently—

Senator LONG of Missouri. Mr. Chairman. Let me ask you what was your official position at this time.

Mr. CALLAS. Sir, I called Mr. Fortas and told him I was writing a book report on this book "Ordeal by Slander."

I might add that I researched this book paragraph by paragraph.

Senator LONG of Missouri. You had no official position of any kind.

Mr. CALLAS. No, sir. I was a student at Columbia University at the time when I was doing this.

Senator LONG of Missouri. What is your work now? What do you do now?

Mr. CALLAS. Sir, I am a magazine production man. I am not presently on the staff. I have just been working with Pan American Airways for the last 2 years as a sales agent. In general, I have done a great amount of research work for various people.

I did write to Mr. Fortas at this time and asked for the source of this, and he did write me back and say that he had decided that, first, he did say that the person who had given it to him was a man whom he knew casually, I believe he said. I have the letter here. But that he decided not to ask for permission to use the name and that was how I was treated when I attempted to ask questions of Mr. Fortas.

The net effect of all that I am telling you, Senators, is that a second hearing before a Senate body was occasioned because the first hearing before the Tydings committee did not elicit the information that was necessary for the Senate to know, and Mr. Fortas aided this client of his in every way to see to it that the Senate did not have the information which they finally did get in the Internal Security Subcommittee. And I still would like to know where the documents came from.

So, gentlemen, I want to thank you very much.

The CHAIRMAN. Yes.

Any questions?

Senator DODD. I have one.

He did get this document in a way you described it to the committee.

Mr. CALLAS. I have no way of knowing, sir, because of many other things which were said turned out to be not true at all, such as the Santo transcript.

Senator DODD. That is not responsive. You told us Mr. Fortas said he received this document in the mail. You have not told us anything that contradicted his statement.

Mr. CALLAS. Sir, I believe I made it clear that I was bringing this matter up to show how Mr. Fortas treated people when they tried to find out information that could have been interesting.

Senator DODD. Don't you think it was a lawyer's duty—

Mr. CALLAS. Pardon, sir?

Senator DODD. Don't you think it was a lawyer's duty if he received such a document to confront the witness with it at the hearing?

Mr. CALLAS. Sir, I would feel better about it if I had known that he had determined that it was a true document. The witness, Mr. Budenz, could not identify it, and this certainly would never had been allowed in a courtroom, as far as I have ever been advised.

Senator DODD. That is not so true.

The CHAIRMAN. Any further questions?

Senator McCLELLAN. I wish you would state, just take 1 minute and state very succinctly why you think Mr. Fortas should not be confirmed. Just state it now. You rambled here, and I could not—I will have to read the record to get all the connections—but just state it as hard and factual right quick. Let us see what you mean.

Mr. CALLAS. Sir, what I mean, sir, is this: I am not really opposing Mr. Fortas' appointment, but I am very confused, as I say in my statement here, about the many questions that arise in my mind because of these matters that I have brought up plus many more. In other words, the Senate of the United States has a responsibility far and above a political responsibility to their parties and to their communities, and that is the security of our country.

The Communist infiltration in our Government, as expressed by your files and by many other files, is a very, very serious one, and here we have a question of an attorney who has actually used Communist people to defame a man who was trying to help the U.S. Senate—namely, Louis Budenz—and I feel that Mr. Fortas did not—

Senator McCLELLAN. Did I understand that he appeared as an attorney?

Mr. CALLAS. Pardon?

Senator McCLELLAN. It was an attorney-client relationship, is that right?

Mr. CALLAS. There was an attorney-client relationship there; yes, sir. But I do not agree that he lived up to that relationship.

Senator McCLELLAN. Well, you stated your reason for it.

Mr. CALLAS. Right. In other words, he had a responsibility to the committee to see that they had information as well.

Senator FONG. Do you mean to tell the committee that he used Communist witnesses knowing they were Communists and told the committee they were ex-Communists? Is that what you said.

Mr. CALLAS. Senator Fong, that is exactly what I am saying.

Senator FONG. That he knew they were Communists but said they were ex-Communists?

Mr. CALLAS. That is correct, Senator.

Senator DODD. But Bella Dodd had been expelled a year before from the Communist Party.

Mr. CALLAS. There is no reason, and certainly anyone who knows anything at all about Communist conspiracy, as you certainly do, Senator, can ever say that an expelled Communist is an ex-Communist within the meaning of any witness before our Senate committees.

Senator DODD. I do not know any better way to become "ex" than that way.

Mr. CALLAS. Well, the difference, Senator—and I think it is very important—is that an expelled Communist will not help your committee to expose Communists and an ex-Communist will.

Senator Dodd. Well, we have had lots of them.

Mr. CALLAS. Not any expelled Communists who did not become "ex," sir. This is not semantics. It is an important point.

The CHAIRMAN. Any further questions?

Senator FONG. What proof have you that he knew they were Communists, were still Communists?

Mr. CALLAS. Bella Dodd was a Communist.

Senator FONG. Yes—that she was still a Communist, not an ex-Communist.

Mr. CALLAS. Sir, the fact that she had never testified whatsoever before anybody exposing Communists, that her testimony, as he read it before it came before the committee, read like the Communist Party would have it read. If you read it yourself, sir, you will see this. He is a trained attorney. He knew the difference between a reformed Communist and a person who was still within the Communist discipline.

Senator FONG. Have you any proof that she did not tell him that she was a Communist? She may have told him she was an ex-Communist.

Mr. CALLAS. No; she did not tell him she was an ex-Communist. I am positive of this.

Senator FONG. You are positive?

Mr. CALLAS. Yes, sir. I say Bella Dodd would be a very important witness before the subcommittee on this particular matter. I have known Bella Dodd.

Senator Dodd. How did you know that?

Mr. CALLAS. Pardon?

Senator Dodd. How do you know that?

Mr. CALLAS. I have known Bella Dodd, sir, for 13 years.

Senator Dodd. I have known her some time, too.

Mr. CALLAS. Senator, I sat with her 2 days ago also on this particular matter and refreshed it in my memory completely.

Senator Dodd. Did she tell you this?

Mr. CALLAS. Yes, sir; she did, and I might add she said she was ashamed of that testimony, and she has already said that under oath before this committee, that she was ashamed of that testimony. This is not anything new I am saying. I am merely bringing it to the attention of the various Senators on this committee who were not cognizant of all the material that is in the files of the Internal Security Subcommittee.

Senator FONG. Are you telling this committee that Dr. Dodd said she was still a Communist?

Mr. CALLAS. Dr. Dodd told me the other day, Senator, that she had been expelled from the party and then she put her hand like this [indicating] and said, "But, of course, I was still a Communist." That is exactly the way she put it to me. And I said, "Well, your testimony shows it, Doctor." We have talked about it many times before, but we were talking about it specifically at this time.

Senator LONG of Missouri. Is she a Communist now? I am not familiar with it at all.

Mr. CALLAS. Sir, she broke with the Communist Party subsequently, was asked to be received back into the Catholic Church, and is presently a confirmed Catholic and a very active anti-Communist. She is a very brilliant woman. She was head of the teachers association in New York. She was on many—— Senator LONG of Missouri. Do you feel she only displayed this just in latter years?

Mr. CALLAS. Pardon?

Senator LONG of Missouri. That she displayed this brilliance in latter years of her life?

Mr. CALLAS. This brilliance; no, sir. I am not one of those people who do not think Communists are brilliant. They are very brilliant. I respect them a great deal. This is why I am very sad they get moyed within this orbit. Thank goodness, some come out of it.

Senator LONG of Missouri. Did you have any difficulty with Mr. Fortas when you served on these committees?

Mr. CALLAS. Personally, you mean, sir?

Senator LONG of Missouri. Yes.

Mr. CALLAS. No.

Senator DODD. I want to be perfectly fair about this.

Mr. CALLAS. Certainly, Senator.

Senator DODD. Are you telling us that Bella Dodd told Abe Fortas that she was a Communist?

Mr. CALLAS. No, sir; I did not say that.

Senator DODD. What is the point? That is an important point here.

Mr. CALLAS. The important point, sir. It is an important point, I agree with you, but the important point here, Senator, is when Abe Fortas went to her was he convinced she was an ex-Communist willing to testify against the Communist conspiracy.

Senator DODD. That is what she told him.

Mr. CALLAS. It is very clear—he did not do this. It is very clear he did not. In 1950 Mr. Fortas was certainly aware—that is after the *Alger Hiss* case exposure, and all the things which shocked all of America—he was certainly aware of what an ex-Communist would do if they really broke with the party as Bella Dodd did do when she did break with the party and came before these committees and gave testimony.

Senator DODD. It took them a long time. There are many, many cases in the files of the Internal Security that ex-Communists who were expelled or left but some years later publicly opposed the Communist Party. You know that as well as I do.

Mr. CALLAS. Certainly, sir. But if they really broke with the party, even though years later they denounced it, they did not praise it while they were in that period of silence. Bella Dodd did. This made her still a Communist, as she said she was, and I would urge you to call her as a witness. She is your best witness.

The CHAIRMAN. Any further questions?

Mr. CALLAS. Thank you, Senator.

The CHAIRMAN. I will place in the record a telegram from Edward W. Kuhn, president-elect of the American Bar Association; telegram from J. Paul Sticht, vice chairman, Federated Department Stores, Inc.; letter from Jeffrey Lazarus, Federated Department Stores, Inc.;

telegram from Walter P. Armstrong, Jr., a very prominent attorney of Memphis; a telegram from Ben Weisberger, a prominent attorney of Memphis; a telegram from Abe D. Waldauer, a prominent attorney of Memphis; letter from Fred Lazarus, Jr., Federated Department Stores, Inc.; resolution of the Association of the Bar of the City of New York; letter from Adolf A. Berle in favor of the nominee; letter of David L. Rike of the Rike-Kumler Co., Dayton, Ohio; letter from Kenneth C. Royall, former Secretary of the Army; letter from Lucius E. Burch, Jr., prominent attorney of Memphis; and a letter from the senior vice president of the Coca-Cola Co., Mr. Benjamin H. Oehlert, Jr.

They will be printed in the record.

(The information referred to follows:)

MEMPHIS, TENN., July 30, 1965.

**Senator JAMES O. EASTLAND,**  
*Chairman, Senate Judiciary Committee,*  
*Senate Office Building, Washington, D.C.:*

Memphis lawyers strongly support appointment of Hon. Abe Fortas to the U.S. Supreme Court.

EDWARD W. KUHN,  
*President-elect, American Bar Association.*

CINCINNATI, OHIO, August 2, 1965.

**Hon. JAMES O. EASTLAND,**  
*U.S. Senate, Washington, D.C.:*

Strongly urge confirmation Abe Fortas Supreme Court Justice. As a business associate of Mr. Fortas for a number of years believe him to be eminently qualified for this important post.

J. PAUL STIOTI,  
*Vice Chairman, Federated Department Stores, Inc.*

CINCINNATI, OHIO, July 30, 1965.

**Senator EASTLAND,**  
*Chairman of the Committee on the Judiciary,*  
*Washington, D.C.*

DEAR SENATOR EASTLAND: I have had the pleasure of knowing Abe Fortas for the past 6 or 7 years and served with him as a fellow director on the board of Federated Department Stores, Inc. All of us on the board regard him highly not only for getting honest opinions on all matters but for his depth of understanding and getting to the heart of every problem, particularly a legal problem.

I have been to Puerto Rico twice in the past 3 years, and if you mentioned Abe Fortas' name, you would be surprised how highly they regard him. He helped them in getting their boots striking—that is, in setting up small businesses so they could really better their economy and give hundreds of people work.

He is a most outstanding person and we hope that his appointment as an Associate Justice of the Supreme Court will be gratifying.

Sincerely,

JEFFREY LAZARUS.

MEMPHIS, TENN., July 30, 1965.

**Senator JAMES EASTLAND,**  
*Senate Office Building,*  
*Washington, D.C.:*

You are most fortunate to have a nominee for our highest Court with the qualifications of Abe Fortas. We are very proud that he comes from Memphis, Tenn. The entire Memphis Bar and the lawyers of Tennessee support him and seek approval of his nomination. If he becomes a member of our highest Court we believe that he will be one of the greatest Justices that we have ever had.

WALTER P. ARMSTRONG, JR.

MEMPHIS, TENN., July 29, 1965.

Hon. JAMES O. EASTLAND,  
*Chairman, Senate Judiciary Committee,  
 Senate Office Building, Washington, D.C.*

All Memphis has known Abe Fortas and is enthusiastic over his appointment to the Supreme Court of the United States. I hope your committee will unanimously recommend his speedy confirmation by the Senate.

BEN WEISBERGER.

MEMPHIS, TENN., July 29, 1965.

Hon. JAMES O. EASTLAND,  
*Chairman, Senate Judiciary Committee,  
 Senate Office Building, Washington, D.C.*

The Honorable Abe Fortas has been a tradition for the best and highest standards of citizenship, legal knowledge, and character in Memphis since his boyhood. He will be an adornment and welcome addition to the Supreme Court. I venture to ask his approval by your committee and prompt confirmation by the Senate. Kindest personal greetings.

ABE D. WALDAUER.

FEDERATED DEPARTMENT STORES, INC.,  
*Cincinnati, Ohio, August 2, 1965.*

Hon. JAMES O. EASTLAND,  
*U.S. Senate,  
 Washington, D.C.*

MY DEAR SENATOR EASTLAND: The nomination of Abe Fortas as Associate Justice of the Supreme Court is now in the hands of your committee. The purpose of my letter is to write to you about Mr. Fortas with whom I have been rather closely associated for the last 20 years.

During this time I have been the chief executive officer of Federated Department Stores, Inc., and he has been our counsel on matters affecting national agencies. I have found him a person of unusually good judgment, impeccable character, with a splendid knowledge of the law. We have followed his advice continually with notable success.

I recommend him very highly for the favorable consideration of his nomination by your committee and yourself.

Cordially yours,

FRED LAZABUS, JR.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,  
*New York, August 2, 1965.*

Hon. JAMES O. EASTLAND,  
*Chairman, Judiciary Committee,  
 U.S. Senate, Washington, D.C.*

DEAR SENATOR EASTLAND: Our association has noted with concern that in some quarters the qualifications of the Honorable Abe Fortas to serve on the Supreme Court of the United States have been called into question by reason of his having represented certain unpopular clients and causes.

The general position of our association in regard to such representation was established at a meeting of our members held on January 20, 1953, when the following resolutions were adopted:

"Resolved:

"1. That the Association of the Bar of the City of New York recognizes that the right of counsel requires public acceptance of the correlative right of a lawyer to represent and defend in accordance with the standards of the bar any client, without having imputed to him his client's reputation, views, or character.

"2. That this association will support any lawyer against criticism or attack in connection with such representation, when in its judgment he has acted in accordance with the standards of the bar.

"3. That this association will strive to educate the profession and the public on the rights and duties of a lawyer in representing any client, regardless of the unpopularity of either the client or his cause."

We trust that, in passing upon the qualifications of Mr. Fortas for this high office, you and your colleagues will be guided by the principles declared in these resolutions, which set forth the time-honored tradition of the bar.

Respectfully yours,

CHAUNCEY BELKNAP, Acting President.

NEW YORK, August 2, 1965.

Senator JAMES O. EASTLAND,  
Chairman, Senate Committee on the Judiciary,  
U.S. Senate, Washington.

DEAR SENATOR EASTLAND: My old friend, Mr. Abe Fortas, has been nominated by President Johnson as Justice of the Supreme Court of the United States. His name is now before your committee. I hope the Committee on the Judiciary will recommend confirmation and that the Senate will confirm.

My knowledge of Abe Fortas covers a period of more than 30 years. It began when he was professor of law at Yale University; I was then professor of law at Columbia. In 1933, he was asked by the Securities and Exchange Commission to study corporate reorganizations and his report is a classic and scholarly study of that subject. That led to his assignment to assist the Commission in working out the complex, but essential, reform of public utilities financing. He, more than any other one man, is responsible for having drawn order out of the chaotic situation which then prevailed. He left Yale in 1938 to become Assistant Director of the Securities and Exchange Commission division charged with that work. Thereafter he was General Counsel to the Public Works Administration, then to Bituminous Coal Division and later to Division of Power of Department of Interior. He became Under Secretary of Interior in 1942. I had opportunity to observe his work during this period, since I was counsel to the Reconstruction Finance Corporation, and later Assistant Secretary of State. He contributed an element of balance, legal skill, and foresightedness in notable degree to that Department.

He left that post to enter private practice—in which he was remarkably successful. He is recognized as perhaps the best authority on antitrust laws and allied legislation in the country. He has twice interrupted practice to act as legal adviser to American delegations to the United Nations and has been counsel to the government of the Commonwealth of Puerto Rico. His successful private practice has not kept him from continuous public service.

He has argued many cases before the Supreme Court of the United States and is thoroughly conversant with its work. He would, I believe, contribute to the Court not only great technical skill, but also a voice of moderation and wisdom. His business experience—as director of Federated Department Stores and other major enterprises—ballasts his intellectual brilliance as professor and his Government experience. Having been fellow-director with him for many years in the SuCrest Corp. (New York), I can bear personal witness to his qualities of caution as well as long foresight.

It seems to me that a man of Abe Fortas' experience and caliber is exactly what the Supreme Court needs at this time. Only one other Supreme Court member—Mr. Justice Harlan—has comparable experience in practice and in the impact of judicial decisions on affairs and business as well as on Government. As I see the current problem-load of the Supreme Court, it appears to me that Fortas' experience in the law is exactly what that Court most needs.

I write this letter as a friend of his; but should write a similar letter without that friendship on the basis of my knowledge of his record and his work as a fellow practitioner and scholar of law. Wide experience, balance, and sensitive appreciation of the results of legal decisions are, I believe, urgently needed on the Supreme Court; these are the precise contributions Mr. Fortas can make to it.

I therefore urge that the Committee on the Judiciary recommend his confirmation to the Senate.

Respectfully yours,

ADOLF A. BERLE,

*Professor of Law, Columbia University; Former Assistant Secretary of State.*

THE RIKE-KUMLER CO.,  
Dayton, Ohio, August 2, 1965.

Hon. JAMES O. EASTLAND,  
Chairman, Judiciary Committee,  
Senate Office Building,  
Washington, D.C.

DEAR SIR: I have known Abe Fortas for some years and would like to tell you that I consider him not only an extremely able member of his profession but also a man of the highest integrity. I sincerely believe that he would make an excellent Justice of the Supreme Court of the United States.

Sincerely,

DAVID L. RIKE, President.

NEW YORK, July 30, 1965.

Hon. JAMES O. EASTLAND,  
Chairman, Senate Judiciary Committee,  
Senate Office Building,  
Washington, D.C.

DEAR MR. CHAIRMAN: I consider that the President's appointment of Mr. Abe Fortas was an excellent one, and I urge that he be promptly approved by your committee and by the Senate.

I have known Mr. Fortas for 23 years—in Government and in private law practice. I have appeared with him and against him in litigation. He is a man of wisdom and excellent judgment. His character is beyond reproach. In my opinion he will be one of the outstanding Supreme Court Justices of this generation.

Sincerely,

KENNETH C. ROYALL.

Copy: The President, The White House, Washington, D.C.

BURCH, PORTER & JOHNSON,  
Memphis, Tenn., August 2, 1965.

Hon. JAMES O. EASTLAND,  
Senate Office Building,  
Washington, D.C.

DEAR SENATOR EASTLAND: Please permit me to elaborate upon my prior telegram in connection with the President's appointment of Mr. Fortas to the Supreme Court.

In my opinion, Mr. Fortas, by reason of ability, training, breadth of experience, and temperament, is outstandingly qualified to serve on the Supreme Court. That his philosophy is said to be liberal rather than being a reproach, as some of his detractors believe, is instead a further aspect of his superior qualifications. From the time of the American Revolution to the present, it is the liberal outlook that has sustained and supported the progress of our country. The viewpoint that the essential aim of government is to protect and foster the dignity of the individual citizen is the central core of liberalism and I believe that it is a position that requires no apology.

The nature of the attacks being made upon Mr. Fortas is most disturbing. To identify an advocate with his client's case is one of the surest ways to make it difficult for unpopular causes to find representation and we must not forget that freedom of speech, freedom of worship, and freedom of the press were all extremely unpopular causes at one time.

Although Mr. Fortas has spent all of his mature life away from Memphis, which is his birthplace, I can tell you that it is more than pride in the hometown boy that makes so many of the leading lawyers of this bar enthusiastically in favor of Mr. Fortas' confirmation.

Respectfully,

LUCIUS E. BURCH, JR.

THE COCA-COLA CO.,  
New York, N.Y., August 2, 1965.

Hon. JAMES O. EASTLAND,  
Chairman, Senate Judiciary Committee, U.S. Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: When Thurmond Arnold left the Federal bench and formed a law partnership with Abe Fortas, the Coca-Cola Co. was the firm's first client.

Over the years I have had the opportunity to know Mr. Fortas intimately and to observe him in many situations. I hope you will not feel it presumptuous for me to say that I have without exception found him to be both an outstandingly gifted lawyer with a profound judicial attitude and also a man of the very highest character and principle. After years of association, both as a client and a personal friend, it is a distinct privilege to be able to commend him to you without qualification as a man unusually fitted to serve as an Associate Justice of the Supreme Court of the United States.

Sincerely,

B. H. OENHLERT, JR.

**Senator JAVITS.** Mr. Chairman, may I suggest if the committee is to have the benefit of these documents that perhaps a duplicate of them can be distributed to the committee. The record will not be out before we vote.

**The CHAIRMAN.** That is all right.

**Senator JAVITS.** Thank you very much.

**The CHAIRMAN.** Mr. Fortas, would you stand up, please, sir?

Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

**Mr. FORTAS.** I do.

**The CHAIRMAN.** Would you sit down?

### TESTIMONY OF ABE FORTAS

**The CHAIRMAN.** Mr. Fortas, you have before you your biography. Is it correct?

**Mr. FORTAS.** Yes, it is.

**The CHAIRMAN.** That will be placed in the record.

(The biography referred to follows:)

#### BIOGRAPHY OF ABE FORTAS

Born: June 10, 1910; Memphis, Tenn.

Education: 1930, Southwestern College, Memphis, Tenn., A.B. degree; 1933, Yale University, New Haven, Conn., LL.B. degree.

Bar: 1934, Connecticut; 1945, District of Columbia.

Experience: 1938-39, Yale University, assistant professor of law; 1934-39, Securities and Exchange Commission, Assistant Director and Consultant; 1939-41, Department of Interior, General Counsel, Bituminous Coal Division; 1941-42, Director, Division of Power; 1942-46, Under Secretary, Present: Arnold, Fortas & Porter, Washington, D.C., law partner; 1941-43, member of Board of Legal Examiners, Civil Service Commission; 1943, member of President's Committee To Study Changes in Organic Act of Puerto Rico; 1940-47, visiting professor of law at Yale University; 1945 and 1946, adviser to U.S. delegation to the U.N., San Francisco and London.

Marital: Married.

Office: 1220 19th Street NW, Washington, D.C.

Home: 8025 N Street NW, Washington, D.C.

To be an Associate Justice of the Supreme Court.

**The CHAIRMAN.** What is the nature of your law practice, Mr. Fortas?

**Mr. FORTAS.** It is a corporate practice, Mr. Chairman. We represent a number of large corporations in the country. I should say that we have several areas of specialization. One is corporate finance. One is the antitrust laws. Another is taxation, and another is communications.

**The CHAIRMAN.** Have you had much courtroom experience?

Mr. FORTAS. Yes, sir. I think I have had quite a good deal, mostly appellate work, but some trial work, I believe.

The CHAIRMAN. Now, Mr. Fortas, there have been many documents passed around and there have been charges hurled. I want to lay them on the record.

Did you have any connection with the Southern Conference of Human Welfare?

Mr. FORTAS. Mr. Chairman, I probably did in the early New Deal days. I am a little vague as to whether I was—I am a little vague as to whether I was a member of the Southern Conference, but I remember in the early New Deal days I, like a number of other southerners, thought it was a fine organization, dedicated to bringing the South out of the depths of the depression.

The CHAIRMAN. When did you quit the Southern Conference of Human Welfare?

Mr. FORTAS. As I say, Senator, I am not sure I was ever a member of it. I am just giving you an altitude that I had along with many other southerners in those days.

The CHAIRMAN. You do not know whether you were a member or not?

Mr. FORTAS. That is correct.

The CHAIRMAN. What about the International Judicial Association?

Mr. FORTAS. Mr. Chairman, to the best of my knowledge and belief I never attended a meeting of such an organization, never had any connection with it whatsoever. Now, this is an old charge that has plagued me for many years, including my previous two confirmations by this Senate when I was Under Secretary of the Interior, and the best I can reconstruct, and I want to emphasize that it is reconstruction, is that some time in the thirties and probably when I was on the Yale law faculty, because I was on the Yale law faculty and spent summers and vacation time in Washington in those years, someone may have written me and suggested that I join this. That was the day when joining was mighty easy, and we were all quick to do it, and I may have said, yes, and that is the totality of my connection with it, if any, and in all these years nobody has ever said that I attended a meeting or ever did the slightest thing in connection with that organization. My mind is blank about that.

The CHAIRMAN. You never attended a meeting?

Mr. FORTAS. No, sir.

The CHAIRMAN. You were not active at all?

Mr. FORTAS. No, sir.

The CHAIRMAN. Did you pay any dues?

Mr. FORTAS. No, sir, not to the best of my recollection.

The CHAIRMAN. What about the National Lawyers Guild? Were you a member of that, sir?

Mr. FORTAS. Yes, sir, I was a member of that for a time. I left at the same time that Mr. Justice Jackson and a great many other people left that organization. I am sure you know its history. There came a time when it appeared rather clearly that a leftwing group had moved in to take control of that organization and a great many people left then, including me.

The CHAIRMAN. If I remember correctly you left at the same time the former Congressman John Rankin left.

Mr. FORTAS. Yes, sir, that is correct.

The CHAIRMAN. What about the American Peace Mobilization?

Mr. FORTAS. I have no connection with that whatsoever, to the best of my knowledge and belief.

The CHAIRMAN. Were you associated with Alger Hiss?

Mr. FORTAS. In the sense that we served in the same Government agency and I knew him. As a matter of fact, Mr. Chairman, and members of the committee, in all these years when I have successively had to read things about myself and Alger Hiss, and so on, it has occurred to me that maybe I ought to have a cause of action against the U.S. Government. I was on the Yale law faculty.

The CHAIRMAN. Now you may proceed.

Mr. FORTAS. Thank you.

In 1933 I got my degree at the Yale Law School, and the same year I was elected to the faculty. That was the summer of the beginning of the New Deal. One of my professors, Prof. Wesley Sturgess, who subsequently became dean of the law school, was called down to Washington to the Department of Agriculture to do some work on sugar, and he asked me to come down for the summer, and I came down for the summer and at the Department of Agriculture there were these people, and I was a boy fresh out of Tennessee 3 years before I got my degree, and I came down here as a result of Professor Sturgess' invitation, and I worked that summer and then the following Christmas holiday and so on, at the Department of Agriculture, and they were present.

The CHAIRMAN. You were not a constant associate of that—

Mr. FORTAS. I beg your pardon.

The CHAIRMAN. You were not a constant associate of Alger Hiss as has been charged?

Mr. FORTAS. Oh, no, sir.

The CHAIRMAN. Now, you represented Mr. Owen Lattimore.

Mr. FORTAS. Yes.

The CHAIRMAN. Mr. Lattimore is now in Britain I understand.

Mr. FORTAS. I think so.

The CHAIRMAN. When is the last time you heard from Mr. Lattimore?

Mr. FORTAS. I believe that some months ago he was in Washington, he and his wife came into the office to say hello, and that was it.

The CHAIRMAN. Did Mr. Lattimore contact you to get the State Department to validate his passport for travel to China?

Mr. FORTAS. One of my partners, I think Mr. Rogers handled that several years ago. Is that what you are talking about?

The CHAIRMAN. No, sir. Last year.

Mr. FORTAS. It may have been last year. I did not myself handle it.

The CHAIRMAN. Now, did you know Walter Alvin Weiss?

Mr. FORTAS. Of New York?

The CHAIRMAN. Yes, sir.

Mr. FORTAS. Yes, sir; I know him slightly. He was again someone who consulted my firm professionally. I believe he is quite a wealthy man. He had some professional problem. He consulted my firm.

Another one of my partners handled the matter. I did not. It was an estate matter, as I remember.

The CHAIRMAN. I know it is nothing wrong in the association. What about Isadore Needleman?

Mr. FORTAS. I do not know him at all, sir.

The CHAIRMAN. Arthur Robert Kanowitz?

Mr. FORTAS. Yes, sir. Dr. Kanowitz is one of the outstanding citizens of the country in the space field. I believe he is connected with ADCO in their space work, and he did come to us a good many years ago with respect to a clearance problem, and that was handled by my distinguished partner Paul Porter, who is here today.

The CHAIRMAN. Yes. I believe that the record shows that you and Mr. Porter told him to make full disclosure to the U.S. Government—

Mr. FORTAS. That is correct.

The CHAIRMAN. Or you would not represent him, is that correct?

Mr. FORTAS. We told him to make full disclosure and worked on him and viewed the situation with him, took him over and he did it.

The CHAIRMAN. And he did make full disclosure or your firm would not represent him?

Mr. FORTAS. That is correct, sir; yes, sir. That has been our general position.

The CHAIRMAN. That is all.

Senator McCLELLAN. Mr. Fortas, I am one of those, maybe only a few, a little concerned about conditions that prevail in this country today with respect to law enforcement.

Mr. FORTAS. I share that view, sir.

Senator McCLELLAN. I may premise what I am about to say, the question I am about to ask you, with this statement. I do not believe that we can continue the course and path we are traveling now and preserve civilized society in this country. Lawlessness and chaos will take over. I think there is a very heavy responsibility on the courts, and I think that the pendulum has swung in court decisions in the other direction to where today it favors the criminal rather than protects society in some instances. I think that trend is noticeable. I think it is a trend that must be corrected.

I make these statements to you as a matter of opinion, before I ask this question, and I am not sure you are prepared to answer it today.

First, I will ask if you are familiar with the exchange of letters and their contents between Judge Bazelon, I believe is his name, and the Attorney General which were published?

Mr. FORTAS. I have seen those letters some time ago; yes, sir.

Senator McCLELLAN. You are familiar with them?

Mr. FORTAS. Yes, sir.

Senator McCLELLAN. I think they present a markedly contrasting, if complete, philosophy and viewpoint with respect to law enforcement. I am going to give you the opportunity, if you care, to make comments about them, about what is involved in that issue. You may do it voluntarily or whatever you wish to say about it.

I may say this to you. I would have some difficulty voting to confirm a nominee for a judicial position who expressed a viewpoint of only one of them. You be your own judge.

Mr. FORTAS. Senator, I was sent a copy of those two letters. I was deeply distressed when I read the letters. I was deeply distressed because I think that if I may say so the letters are unfortunately phrased. I think that the letters are couched in language which tends, unhappily, to precipitate controversy which I am sure that neither the distinguished Attorney General nor Judge Bazelon desires.

The substantive question that they raise is a question of the greatest importance and the greatest difficulty. It is a question that has not yet been settled by the courts. It is a question of the extent of interrogation of persons who are arrested or even prior to arrest under investigation for crime.

I think it is one of the most difficult and one of the most important problems that we have in criminal jurisdiction and procedure.

The occasion for the letters, as you know, Senator McClellan, was a draft published by the American Law Institute. I regret to say that I have not had time or opportunity to study that draft. I really hope that views of these two very distinguished and very fine men, the Attorney General and Judge Bazelon, are not as far apart as the wording of these letters would make it appear, and I, myself, think I can say without impropriety I know that nominees for the Supreme Court here in the past have expressed great diffidence in speaking about matters that may possibly come before the Court, and I appreciate that, and I do not want to breach that rule, but I may say that I think it is appropriate for me to repeat what I have said in the past before I was nominated for the high position which is that I believe that an adequate opportunity in the hands of the police to interrogate persons who are accused of crime or who are suspected that they might have been involved is absolutely essential to law enforcement. At the same time I recognize that there comes a point at which such persons should be brought before a judicial officer, such as a magistrate, for the purpose of ascertaining whether there is probable cause for their continued detention, and the great difficulty, the great problem, which I confess I would not be able to suggest a solution to, the great problem is where to draw that line and, as you know, Senator, because this is a field with which you are very much concerned, there is a great debate raging right now in all professional circles and in the law schools, and so forth, as to where that line ought to be drawn, and it is a problem of the utmost difficulty and if, and I hope to gain much more wisdom and hear many more opinions of lawyers and judges and police officers before arriving at a conclusion. I am far from it right now.

Senator McCLELLAN. Do you agree that it is probably one of the most vital issues facing our courts today with respect to law enforcement?

✓ Mr. FORTAS. I certainly do, and I think I said that, Senator. I certainly do. It is a critical issue.

✓ Senator McCLELLAN. However it may be resolved may have a comparable impact upon the security of society.

✓ Mr. FORTAS. Yes, sir; I think so.

✓ Senator McCLELLAN. You recognize it along with the rights of individuals. I mean it is in that delicate area.

✓ Mr. FORTAS. Yes, sir; I fully agree with that, yes, sir.

Senator McCLELLAN. Now, one other question. I am not trying to press you. I do not think maybe a nominee should be compelled to make a court decision in his testimony here. That is not the point. But I could not refrain from bringing this issue to light at this time and let you make some comment on it because it is probably one of the most important things you are going to have to help resolve as a member of that Court.

Mr. FORTAS. Yes, sir.

Senator McCLELLAN. And I think that is one of the questions.

Mr. FORTAS. And I can only pray to Heaven that I have or will acquire the wisdom to participate in a good resolution of it, Senator.

Senator McCLELLAN. Only one other question.

Out of your broad experience and your recognition of the acuteness, the criticalness of this problem and issue, would you say that legislation might be appropriate in this field, that some legislation by the Congress might be helpful in resolving it, or are you prepared to comment about that?

Mr. FORTAS. Yes, Senator. I think I can answer it this way.

Just what are the constitutional limits I am not prepared to say. But within the constitutional limits I would think that this is an appropriate matter for legislation; yes, sir. But just where the Constitution, where the power of the Congress and the impact of the Constitution hit on this particular problem is a very difficult question and I do not even have an idea on it.

Senator McCLELLAN. Without trying to identify or define the legislation, its provisions or terms, as you approach, possibly, as anticipated here, as you approach these responsibilities that will rest upon you along with your colleagues on the Court to resolve this problem, I just wondered if we adopt legislation in this field, the Congress might within the framework of the Constitution enact some legislation that would be helpful toward resolving it.

Mr. FORTAS. I beg pardon, Senator. Do you mean do I have any specific ideas?

Senator McCLELLAN. No, I did not mean necessarily that you recommend specific legislation. I will put it this way. Do you agree that it is of that moment, of that importance and grave concern, that it is quite probable that Congress can be helpful if it will study its opportunities and possibilities and its duty with respect to legislating in this field?

Mr. FORTAS. Yes, Senator, with the same reservation that I do not know, I cannot suggest, I cannot volunteer any ideas even as to the precise point at which the legislative power is exhausted on this subject.

Senator McCLELLAN. I would not expect you to try to say. I am not even trying to say at the moment just what legislation is needed. I am talking about the broad area. I think it is urgent that this trend that I referred to be reversed. I think it is imperative, more than urgent, I think it is imperative, and I think there is possibly a dual responsibility on the part of Congress and the court and without specifying or trying to define just what should be done in the sense we ought to have a law to do this or do that, I think it is of that

urgency that the Congress and the court who has the primary responsibility in this field, shall with all diligence proceed to try to resolve it.

Mr. FORTAS. I completely agree, Senator, completely.

Senator McCLELLAN. Thank you very much.

I do not want to take up too much time.

Does anyone else have any?

Senator SCOTT. Mr. Chairman.

The CHAIRMAN. Senator Scott.

Senator SCOTT. May I comment on this?

Mr. Fortas, I want to associate myself with what Senator McClellan has said regarding the concern about the whole crime situation and the exchange of correspondence, and I do not ask you, obviously, to comment on the somewhat varied point of views expressed. I respect both gentlemen. I know them both.

I happen to find myself in agreement with the Attorney General.

What does greatly concern me is the implication of Judge Bazelon's letters. If that kind of thinking enters into the circuits' reasoning and that of the Supreme Court it seems to me there will be considerable danger, if I read the right implication into his letters, because he seems to be saying something about compensatory equality; or, to put it another way, he seems to be saying that because crime involves primarily the poor, therefore, the court has the responsibility as a sort of equalizer and that equality is that which is being fought for and that person who is poor ought somehow because he is poor to have thrown into the balance of the judicial scales something in his favor as against the State or the people so as to equalize his unfortunate condition.

But crimes, as the Attorney General pointed out, is one of the awful concomitants of poverty, and this being so, the society to be protected includes the poor people who surround the poor man who is accused of crime, but the purpose of the laws is for the protection of society as well as for the protection of himself, and if we find creeping into our doctrine a belief that because someone is disadvantaged vis-a-vis society generally or vis-a-vis even his own neighborhood that somehow the court has the responsibility to the state as one of the weights and dropping it in the scales on his side and weighing the scales against society in order that in this way a compensation can be given to him because of the fact that being poor and having less advantages he is the more likely to be involved in crime.

To my mind that is a dangerous philosophy and it hits most severely against the people whom it assumes to protect, those who live in the closest society with the person accused of crime.

I do not know whether you feel free to comment philosophically on that, but I think it is one of the things which make people a little more likely to commit a crime than they otherwise would.

Mr. FORTAS. Senator, I do not want to interpret or comment on Judge Bazelon's letter or on the Attorney General's letter. I do want to say this, if I may, because I am interested in your committee getting as much of an impression of me from what I am as possible. I do want to say this:

I could never subscribe to the theory that because a man is poor the scales of justice should be weighted in his favor. I could never sub-

scribe to the proposition that because a man is rich the scales of justice should be weighted in his favor! But I do profoundly believe and I want to make this clear that I believe that because a man is poor he should not be deprived of the representation of counsel and of the wherewithal, the facilities to make his defense in our courts of law. But I would utterly reject any suggestion that the scales of justice should be weighted by one ounce or a fraction of an ounce in his favor because he is poor.

Senator SCOTT. Either for the poor or for the rich.

Mr. FORTAS. Exactly, sir.

Senator SCOTT. And as to the right of counsel and as to what you said I could not agree with you more, but I did want to get this sort of creeping theory of some sort of compensatory equality whereby society makes up to a person in his treatment of him the ills which long-existing conditions in society have wrought in the first place.

Mr. FORTAS. Justice is not like the progressive income tax.

Senator JAVITS. Mr. Chairman, Senator McClellan, will you yield for a question on this point?

Senator McCLELLAN. I do not have the floor! The chairman has returned.

Senator JAVITS. I have one question.

Senator McCLELLAN. I had yielded the floor.

Senator JAVITS. Mr. Fortas, do you believe, however—I heard your testimony, and I find myself most sympathetic to it—do you believe, however, every man, rich or poor, is entitled to counsel at the earliest possible moment in any criminal proceedings and that criminal proceedings are not a game of the police holding counsel at the door while they get a confession and then letting him in the door?

Mr. FORTAS. I believe that, Senator, but I would have to hasten to say in order that I should not be misunderstood that the question of what is the earliest possible moment is an extremely difficult and complex one. That is to say it obviously is not when a man is stopped on the street and the policeman wants to ask him a question, it obviously is not there and, on the other hand, it obviously is not the other extreme just after he has been convicted and when he comes up for sentencing. It is somewhere in there and that, again, to my mind is the second most difficult problem with which the law, the lawyers, the bar association, and the law schools are now struggling painfully, and I again hope that from this great effort there will come forth a result which is good for the protection of society and which is good in terms of the protection of the individual.

Senator JAVITS. May I say that having been an attorney general concerned with law enforcement I thoroughly agree with you in this, and I like the fact that you are not giving an opinion now, that you are going to hear the arguments and consider the situation in a dynamic way because it is a dynamic situation and try to come to a judgment which will be fair, but you do agree, do you not, that we should try to see that counsel is available to defendants no matter how indigent and that this is a proper function of government to make them available.

Mr. FORTAS. Senator, my record on that I think speaks for itself. I have a good deal of blood in that particular cause.

Senator JAVITS. I mean that still is not a reply. You do agree with me.

Mr. FORTAS. Yes, indeed; yes, indeed.

Senator JAVITS. Thank you very much.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. No questions.

The CHAIRMAN. Senator Dodd?

Senator DODD. I think I am prejudiced. I will not ask any questions.

Mr. FORTAS. Thank you, Senator, very much, for your fine statement.

The CHAIRMAN. Senator Hart?

Senator HART. I have no questions except to indicate that I think the nomination is an excellent one.

Mr. FORTAS. Thank you, Senator.

Senator HART. And if Abe Fortas has fooled America over these years we ought to quit, we are wrong on everything, and we are definitely wrong on this one.

Mr. FORTAS. Thank you, Senator.

The CHAIRMAN. Senator Long?

Senator LONG of Missouri. No questions.

The CHAIRMAN. Senator Kennedy?

Senator KENNEDY of Massachusetts. No questions.

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. Mr. Fortas, pursuing the subject that was originally broached by Senator McClellan and then added to by my other colleague, this committee has been concerned with the trend to which Senator McClellan has referred. It is a trend toward an ideal, theoretical and legalistic. This concern for the rights of the individual charged with crime has been to the exclusion of all the other underlying purposes and the values sought to be achieved in the criminal process. When such a trend goes to a point where it clashes with the rights and the safety and the well-being of society at large as well as with the individual victims and potential victims of those who are charged with crime, that is where we find two propositions which must be balanced. In recent years the scale has been heavily weighted on the side of the man charged with crime, many times to the exclusion of the competing interests of society.

All of us, I think, who have spent any time studying this question know the difficulties which arise when specific cases are considered in this context. You put it so well when you referred to the difficulty of determining the earliest moment at which the prisoner or the man accused of crime is entitled to certain rights.

It is for this reason that I followed with a great deal of interest your answers and your discussion. I found particular comfort in your statement that you would hope to gain further wisdom in the consideration of specific items and specific cases.

Mr. FORTAS. Yes, sir.

Senator HRUSKA. From the briefs and from the facts and from the police and law enforcement officers and so on.

I would ask whether or not the statement I made with reference to the requirement that these interests be balanced when they clash comports with your understanding of the problems which have arisen in this area.

Mr. FORTAS. Precisely, Senator. I think what is happening in this field is that an effort is being made as so often happens in our society to achieve a new kind of equilibrium, and that is what is going on now, and if it is weighted too heavily on one side or the other the results can be extremely harmful, and Senator Javits complimented me by inference a moment ago by saying that he was glad that I did not say—did not take a position on this. I have to confess, Senator, that I do not have a position on this except that I have studied it and considered it, and I regard it as exceedingly difficult, and what Senator Hruska said is, in my opinion, the right way to go about it; that is to say, to take it up in terms of specific issues presented in specific cases.

Senator HRUSKA. This committee, and particularly one subcommittee, had occasion to go in depth into the theory and the concepts of *Gideon v. Wainwright* when we considered the Criminal Justice Act of 1964.

Mr. FORTAS. I know you did, Senator, and I know the wonderful work you did on that subject.

Senator HRUSKA. I want to commend you for the aid and comfort you gave to the members of the committee with your sage counsel and your advice in applying that principle to legislation that had to be drawn—

Mr. FORTAS. Yes, sir.

Senator HRUSKA (continuing). And specific procedures that had to be prescribed. It was far different than dealing in generalities. We had to get down in words those specifics which can occasionally rise to haunt you at a later date.

Mr. FORTAS. That is correct, Senator.

Senator HRUSKA. Mr. Fortas, there are some other questions I should like to ask you. Some of them are the product of my own mind; some are questions I have been requested to put to you and in deference to those of my colleagues I will do so.

One of the subjects which has been discussed extensively both in the press and otherwise, is your representation of the Commonwealth of Puerto Rico in the oil refining company case. It was the Phillips, was it?

Mr. FORTAS. Yes, sir.

Senator HRUSKA. Phillips?

Mr. FORTAS. Phillips refinery or oil company. I forget which.

Senator HRUSKA. And the fact that there was awarded to a company certain privileges in the field of the refining and importing of oil and petroleum products into the United States which no other company had. Would you care to give us a brief account of the nature of that suit and any other comments you might want to make on it?

Mr. FORTAS. I should, indeed, and I appreciate the opportunity, Senator.

No. 1, we have been counsels for the Commonwealth of Puerto Rico and before that the government of Puerto Rico for well over 15 years.

No. 2, we had nothing whatsoever—nothing whatsoever to do with the Phillips Refining-Puerto Rico matter until after Secretary Udall announced that he was going to recommend to the President that the oil quotas be revised so as to permit Phillips to locate a petrochemical plant in Puerto Rico. My firm was not consulted. We had nothing

whatever to do with that, directly or indirectly. That was handled entirely by officials of the government of Puerto Rico with the Phillips people.

Now, item 3, I, personally, had nothing whatever to do with that matter at any time. The only involvement of my firm was as follows: After Secretary Udall announced his decision, one of my young partners, John Ridgley, was called in by the government of Puerto Rico to work with them in connection with the contract negotiations with Phillips.

Item No. 4, I have never at any time made representation about this matter to Secretary Udall, anybody at the Interior Department, anybody at the White House, anybody in the U.S. Government. I have never attended a conference on the matter. I had nothing whatever to do with it.

And that is the sum and substance of the story.

SENATOR HRUSKA. It is a forthright statement. I am pleased that you responded as you have.

There is another subject which has formed the basis for much speculation and many comments. It deals with efforts allegedly made by you to get a suppression of the news with reference to the Walter Jenkins case last fall. Would you like to comment on that subject, sir?

MR. FORTAS. Yes, sir. I will comment on that.

There came a day, a morning when I was in my office, and I got a telephone call from Walter Jenkins, whom I greatly admired as a dedicated, selfless servant of his country. Mr. Jenkins told me that he was in great trouble. I think I can remember it. He said, "I am in terrible trouble. I have to see you." I said, "Walter, come on over to my office. Be glad to see you." He said, "No; I want to see you at home."

Now, I immediately proceeded to my house and Walter came there. He was extremely distraught. I have never seen a man as distraught as he was at that time. I took him up to the second floor of my house, to my study, and I sat him down and I did not know what this was about, and I asked him if he had had breakfast and he said "No," and I said, "Could I get you some?" He said, "No."

And I said, "Let me get you some coffee anyway." And I got some coffee for him. And he then told me, and there is no way to convey this as it actually happened, told me in an extremely distraught way that he had been told by somebody on the White House staff that a call had come in from a newspaperman saying that he had been arrested about a week ago, a week prior to the time that he came to my house, and I said, "Well, Walter, you have been in the kitchen before and no point in getting disturbed about this, what is it? What is the charge specifically and is it true or is it not?"

I did not get an answer from him. The man could not at that moment put one word consecutively after the other. And I found out the name of his doctor from him and I called his doctor and I asked his doctor to come over.

I think it was after the doctor was over that I then asked Walter where his wife was, if I could call her and tell her that he was sick, and he said he didn't know, and I tried various ways to reach his wife, and I could not reach her.

The doctor came over and told me that this man was in the midst of a complete breakdown and that he wanted to take him to the hospital and, remember, gentlemen, that at that time I still did not know whether this horrible story had any relationship to fact or whether it was just some absolutely scurrilous accusation,

But Walter had told me that the Washington Evening Star was about to publish this... I was desperately concerned, of course. I was desperately concerned for this man's wife and for his six children.

The doctor took Walter off to the hospital, and I then went to the Evening Star. I am not ashamed of it at all. I am glad of it. I am proud of it. I had a meeting with the folks there, and I told them precisely what the situation was. I said: "I do not know, I cannot find out from this man whether the story that you have has any foundation in fact, or whether it is the kind of desperate thing that sometimes happens in Washington." And I did ask them to hold up the story until it could be checked out and until we could locate Mrs. Jenkins and at least prepare her and have her prepare the children for that.

I pointed out to them that the Evening Star and the Washington papers do not ordinarily publish information about incidents of this kind. They do not, and that perhaps a man in public office has to resign himself to the fact that he is a special case and that stories of this sort are publishable about him, but that they should at least give us time to find out and be able to present them with a story with Walter's side of the story and at least give us time to communicate with his wife.

I shall always honor these men at the Star. They had a scoop. I shall always honor them. I shall always as a human being feel grateful to them because they said they would withhold it, and they told me that the other papers might have it, the story. There was nothing that I could do for Walter except perhaps give him a little time so that the doctor could get him in shape so that he could tell us what actually happened and so we could get in touch with Mrs. Jenkins.

And I went to the other papers with a similar request.

And that is the Walter Jenkins story.

Senator Hruska. The fact, however, was that there was on the police blotter a record by that time, is that not true?

Mr. FORTAS. I did not know it, sir.

Senator Hruska. You did not?

Mr. FORTAS. I did not, of course, no sir, the incident happened a week ago. It was amazing there was a week's lapse between the time of the incident and the time of the Jenkins call to me, the time the newspapers had the story.

Senator Hruska. Now, there is another general proposition that has also been widely discussed. Through the years you have formed a very close friendship and relationship with our President, which is not merely personal and social, it has also involved professional, business, and political dealings including many personal transactions with the President's own estate, and so on. In the President we not only have a man whom you have represented and for whom you have apparently great affection and respect; we also have a man in the political world who is espousing a particular kind of political and legislative program. And doing quite well at it in the last 6 months, I might add.

I presume in due time various aspects of this administration's program will wind up before the Supreme Court of the United States. Now, for the benefit of those who have asked me to ask this question, is there anything in your relationship with the President that would militate in anyway against your being able to sit on that bench and pass judgment on cases that come along and thus would affect your ability to function in the true judicial fashion and tradition?

Mr. FORTAS. The short answer to that, Senator, is absolutely not, but let me take this opportunity to say to you that there are two things that have been vastly exaggerated with respect to me.

One is the extent to which I am a Presidential adviser, and the other is the extent to which I am a proficient violinist. I am a very poor violinist but very enthusiastic, and my relationship with the President has been exaggerated out of all connection with reality.

The odd thing about it is every time I have said that to people and to the press they think that this fellow Fortas must be very close to the President because he says this is exaggeration and there is no way to catch up with this. But the President—I value highly my long friendship with the President, and there is absolutely nothing, no possibility that that relationship could in any way enter into any judgment that I might make.

You know, Senator, I did not want any public position, and I made that clear to him. I did not want it for a great many reasons. I revere the courts. I have like all lawyers always entertained a hope that someday despite the amount of modesty, that someday that opportunity to serve there would come to me. But I am very distressed at any suggestion or idea that any relationship that I might have with the President would in any way bear upon the discharge of my functions in the Court. It could not be.

Senator HRTSKA. I asked that question not only because I was requested to do so but also because historically one of the propositions to which the Senate has addressed itself concerning appointments of this kind has been the possibility of a conflict of interest. As I remember it, about 80 years ago a confirmation by the Senate was denied because of the business interest and the professional alignment that the nominee had with a certain business firm which was very much involved in the antitrust laws at that time. Conflict of interest can assume many forms, and your relationship with the President is one possibility of a conflict of interest. It is for that reason I asked the question.

Mr. FORTAS. I have no business relations with the President or his family whatsoever. The extent of legal assistance that I have furnished has been again magnified out of all proportion. It began, Senator, many years ago, shortly after I left Government, and then Mr. Johnson's then lawyer was Alvin Wirtz, who had been my predecessor, one of the Under Secretaries of the Interior, and he was a lawyer, too, with Mr. Johnson and family, and the problem came up and he called me in and usually that is the way it has happened, that other lawyers have called me in. I do a great deal of work of that sort.

Senator HRTSKA. Thank you very much, for your patience in answering my questions.

Mr. FORTAS. Thank you.

Senator HRUSKA. And thank you, Mr. Chairman.

Senator FONG. Mr. Fortas, Mr. Callas this morning charged that you brought Dr. Dodd to the committee room and passed her off as an ex-Communist when you knew she was then a Communist. Would you like to comment on that?

Mr. FORTAS. Senator, that is absolutely inconceivable to me. In the first place I cannot conceive of misrepresenting whether Dr. Dodd or any other witness was or was not a Communist. I can't imagine that happening. In the second place, I have never in my entire career, and it has been a busy and active career, it has never been suggested that I have deviated in the slightest degree from the standards, and I hope the highest standards, of my profession. I have never, would never, could never misrepresent directly or by implication anything to a committee of the Congress or to a court—I hope to anybody else.

Senator FONG. I asked you the question to give you a chance to answer it.

Mr. FORTAS. I appreciate it, sir.

Senator FONG. Now yesterday in the Senate we had a very, very important matter that was discussed by the Senate, the question of reapportionment.

Mr. FORTAS. Yes, sir.

Senator FONG. As you know, I come from a small State with a population, oh, approximately 600,000, according to the 1960 census, and there are approximately 18 States that have less than a million people, and I am sure you are familiar with the case of *Reynolds v. Sims*. In that case the Court held that all the State legislatures must be apportioned according to one man, one vote.

In article V of the Constitution it says as follows, which is very simple language:

No State without its consent shall be deprived of its equal suffrage in the Senate.

And amendment 17, the 17th amendment says:

Senate of the United States shall be composed of two Senators from each State.

I would like to ask you as to whether these phrases here are simple enough so that you can give me an answer as to whether the decision of *Reynolds v. Sims* could logically be pushed to its conclusion so that the Senate of the United States may follow the decision of *Reynolds v. Sims*?

Mr. FORTAS. Senator, you flatter me. I could not. I could not give you an opinion on that.

Senator FONG. May I ask you, are these words simple enough so that you can give me an answer if the matter of reapportionment came before the Supreme Court of the United States that the Senate of the United States is not reapportioned according to the one man, one vote and an argument was made before you that this is violative of the 14th amendment and 5th amendment, the 14th amendment equal protection clause and the 5th amendment due process clause; and reading those very simple words that there shall be two Senators and that the State shall not be deprived of equal representation of Senators? How would you rule in a case like this?

Mr. FORTAS. Senator, you compliment me very much by assuming that I have an opinion which I could state if I felt at liberty to state it: I do not have an opinion.

Senator FONG. Now, let me ask you, these words are very simple, let me read them to you again. Article V says that no State without its consent shall be deprived of its equal suffrage in the Senate. Do you feel that the 14th amendment or the 5th amendment can abrogate that?

Mr. FORTAS. Senator, I just have to repeat that this is a kind of question that you obviously have studied and I must say to you that I would equally obviously have not studied and it would be arrogant on my part to say anything about it except that I have no opinion.

Senator FONG. Do you feel that the 17th amendment which says that there shall be—the U.S. Senate shall be composed of two senators from each State, that the 14th amendment and 5th amendment can supersede that?

Mr. FORTAS. I regret to have to give you the same answer.

Senator FONG. Now, let me ask you the question concerning electors on article II which states as follows:

Each State shall appoint in such manner as the legislature thereof may direct a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.

That means that Hawaii now has four Members in the Congress; we are entitled to four votes in the electoral college.

Following the decision of *Reynolds v. Sims* we could easily be cut down to one vote or at most two votes. And every State that has a population of less than 3,800,000, that means that 34 States of the Union, two-thirds of the States of the Union have less than 3,800,000, and so therefore, if *Reynolds v. Sims* were pushed to a logical conclusion, these States would suffer a loss in senatorial representation because they do not have 3,800,000 in each. According to the 1960 census we have 180 million people in these United States. So one Senator would be representing 1,800,000 people and 2 Senators would be representing 3,600,000 people.

Now, this matter is very important to 34 States of the Union as to their representation in the U.S. Senate, as to their strength in the electoral college, and these phrases here in the Constitution to me are very simple, that could be understood by a fifth grade pupil.

Now, you have refused to give me an answer on the grounds you have not studied it. Now I ask you again as to whether the very simple language in article II, the very simple language in article V, the very simple language in the 17th amendment which says very definitely that you cannot take away the equal representation of the States without a consent, that the electors shall be equal for the number of representatives, whether the 14th amendment or the 5th amendment, according to your philosophical or political or social bend—social economic bend—with regard, because the matter has come before the court in Hawaii and they used a socioeconomic argument, whether that would force you to abrogate these phrases in the Constitution?

Mr. FORTAS. You are presenting a legal question, Senator.

Senator FONG. Yes.

Mr. FORTAS. And all I can say with apologies to you is that I have not studied it and I don't have an opinion, surmise or a guess.

Senator FONG. Do you think—

Mr. FORTAS. I hope you forgive me.

Senator FONG. Do you think these words are clear enough?

Mr. FORTAS. Sir?

Senator FONG. Do you think these words are clear enough?

Mr. FORTAS. My profession is words.

Senator FONG. Yes; I understand that.

Mr. FORTAS. And I have the greatest, greatest respect for them and greatest fear of them, and there are very few words that are simple. I don't want to answer your question, Senator.

Senator FONG. You don't want to answer it?

Mr. FORTAS. Because it would be idle, because I have not studied it, and there is no point in my giving you an—

Senator FONG. I appreciate your position.

Mr. FORTAS. Uninformed reaction.

Senator FONG. Thank you.

Senator ERVIN. Mr. Chairman, if I may give Senator Fong a little brief on that subject which disturbs me very much, I will do so.

The provision of the Constitution that says that each State shall be represented in the Senate by two Senators and no State without its consent can be deprived of its equal representation in the Senate appeared in the original Constitution. It is a fundamental principle of law in the Constitution that a new subsequent provision of law or subsequent provision of the Constitution which is inconsistent with the prior provision controls.

Now, the Supreme Court of the United States held in striking down segregated schools in the States, that the equal protection of the laws clause in the 14th amendment invalidated segregated schools in the States. That was held in the case of *Brown v. Board of Education of Topeka*. Well, the Court also had before it the same question as to the schools of the District of Columbia, and the District of Columbia was not a State, therefore, the equal protection of laws clause of the 14th amendment did not apply to the District of Columbia. So the Supreme Court could not hold that equal protection of laws clause of the 14th amendment prohibited the segregated schools in the District of Columbia. So they wrote handed down the opinion in the case of *Bolling v. Sharp*, in which the Chief Justice said the due process clause of the fifth amendment which does apply to the Federal Government meant the same thing on that aspect of the case as the equal protection of the laws clause of the 14th amendment.

Now, if the Court meant what it said in that case, and it holds to that consistently, I do not know of anything that would prevent it from holding that since the due process clause of the fifth amendment applied to the Federal Government means the same thing in one context as the equal protection of laws clause in the 14th amendment, then it means the same thing in another context. When the Court handed down *Reynolds v. Sims* and these other reapportionment cases it said that the 14th amendment controlled because it was later in point of time than the original Constitution.

And I do not know why the Supreme Court could not equally say that since they held in *Bolling v. Sharp* that the due process clause of the fifth amendment, which applies to the Federal Government, meant the same thing in one case as equal protection of the laws

clause of the 14th amendment meant that, therefore, this one-man, one-vote theory controls the Federal Government and it is a violation of that theory to allow Hawaii to have the same number of Senators as New York and, therefore, the one-man, one-vote theory is going to require a reapportionment of seats in the U.S. Senate.

You can do it with the greatest of logic.

Senator FONG. We have 34 States—may I interrupt the Senator here? We have 34 States that would be interested in this.

I would also like to say that in that case of *Bolling v. Sharp* the Chief Justice Warren said, and this is what he said:

In view of our decision that the Constitution prohibits the State from maintaining racially segregated public schools it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government—

and my distinguished colleague from Nebraska, the other day paraphrased it and said by using this decision it could very well abrogate the very specific words here in the Constitution relative to apportionment, relative to Senators and electors from the States by just paraphrasing and says as follows:

In view of our decision that the Constitution prohibits the States from maintaining legislatures unless they are apportioned solely on the basis of population, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.

Now, this is what I am trying to get at, whether you feel that the 14th and 5th amendments will abrogate these very simple clauses in the Constitution which has been there for a long, long time and whether you feel that the logical extension of *Reynolds v. Sims* will give you a chance to knock all of us out from the Senate? There are 34 States that are involved in this.

Mr. FORTAS. Well, if I should, which I doubt, but if I should arrive at the conclusion that it does, I hope I will not avail myself of that privilege. In other words, Senator, I really do not, my immediate reaction to this is to tell you that as a matter of lunch in the way I feel about it, it would seem to me to be sort of inconceivable to reach such a result, but I know I should not say that and primarily I should not say it because I have not studied the question.

Senator FONG. You think it is inconceivable?

Mr. FORTAS. You and Senator Ervin have studied it and discussed it here with a way that is of great interest to me, but I have not.

Senator FONG. Did I get you to say, Mr. Fortas, that you think that result is inconceivable?

Mr. FORTAS. Yes, and I probably—

Senator FONG. In fact, that is all I wanted to get from you.

Senator ERVIN. If I might be just as pessimistic as the law allows me to be, I would say it was also inconceivable that the one-man, one-vote theory would be espoused by the courts in Tennessee.

Mr. FORTAS. You have a difference here. Senator Ervin pointed out the difference between the explicit provisions of the Constitution and the general provisions.

Senator FONG. That is right.

Mr. FORTAS. Here you have explicit provisions, but I really would beg of you to excuse me from further discussion of this because—

**Senator FONG.** I have your answer already. Thank you.

**Mr. FORTAS.** It is really in the area of—so far as I am concerned—just casual conversation which is a dangerous thing to do before a Senate committee.

**Senator FONG.** That is all I want, is casual conversation.

**The CHAIRMAN.** Senator Javits?

**Senator JAVITS.** Mr. Chairman.

**Senator ERVIN.** I might add, more dangerous than that, though, is the fact that judges can take the due-process clause and make it mean almost anything they want it to mean. I think the Senators here learned that they do that on many occasions, and I hope you will not do so.

**Mr. FORTAS.** Thank you, Senator.

**The CHAIRMAN.** Mr. Javits.

**Senator JAVITS.** Mr. Chairman, I have known Mr. Fortas for at least 20 years as a distinguished and able lawyer, and I have also known him personally and socially to a modest extent. It seems to me that he has shown, in all the years I have known him, every qualification to be a Justice of the U.S. Supreme Court, and so I, like Senator Dodd, am a little prejudiced by virtue of past association and knowledge.

I would like, however, to ask this of the witness.

The witnesses who have testified this morning have gone into great detail about many organizations, mentioned the names of many people. Like Mr. Fortas and others, I, too, have been the butt of this kind of thing in one form or another, and there is always the point raised after a hearing of this character that we did not ask you this question or that question or some other question or about this individual or that individual.

Therefore, I would respectfully ask the witness whether he would feel it entirely proper for me to ask the Chair's consent that the witness may have an opportunity to review the record and to write to the chairman a letter which would deal with any aspect of the record that he feels he would like to deal with just to be sure that the record is absolutely complete for all posterity and that that letter may be made a part of the record? Would the witness feel that that was a constructive, useful thing to do?

**Mr. FORTAS.** I shall be glad to do that, Senator. Thank you.

**Senator JAVITS.** I ask that, Mr. Chairman.

**The CHAIRMAN.** Make the motion.

**Senator JAVITS.** I ask that consent, Mr. Chairman.

**The CHAIRMAN.** Senator Javits asks consent. Is there objection? The Chair hears none.

(Subsequently the following letter was received:)

ARNOLD, FORTAS & PORTER,  
Washington, D.C., August 6, 1965.

Hon. JAMES O. EASTLAND.

Chairman, Committee on the Judiciary, New Senate Office Building, Washington, D.C.

MY DEAR MR. CHAIRMAN: I appreciate the opportunity which your committee has given me to comment upon the record of hearing concerning my nomination as Associate Justice of the Supreme Court of the United States.

Upon reflection, I doubt if further comment—in addition to the statements that I made at the hearing—with respect to the testimony of the two hostile

witnesses who appeared in the proceedings, would serve any purpose. I should like to point out, however, that it is not merely the right of lawyers to defend unpopular causes, but also their duty, when confronted with the need and the summons to service.

It was on this principle that my firm has represented various persons (including some commonly regarded as rightwing extremists) accused of activities which were repugnant to us as well as to Americans generally.

The special training and position of lawyers in our society, in my opinion, require of them something more than professional competence and integrity. They also require a willingness to serve in nonremunerative and frequently hazardous capacities, sometimes involving matters which are personally distasteful.

I take this opportunity, Mr. Chairman, to express to you and the members of the committee my profound appreciation for the courteous hearing which you accorded to me.

Respectfully yours,

ABE FORTAS.

Senator JAVITS. Just one other thing.

I like the fact that you have refused to give an opinion on any legal case, and I hope the charm and wit of my colleague, Senator Fong, and the answer which it elicited will not be considered a breach of that principle on the part of the witness.

Mr. FORTAS. I hope so, too, Senator.

Senator JAVITS. I agreed with the witness. I agree with him. Let me say and leave the witness out of it that that is inconceivable. I do not agree it is a logical result of *Reynolds v. Sims*, nor do I agree with the proposition that the latest amendment to the Constitution overrules all previous provisions of the Constitution or all previous amendments, but that is a legal question which the courts can hear and I can only tell the witness that if a court ever made any such provision as implied by these questions it would be a lot less important than the Court I hope Mr. Fortas will be confirmed to, and there will be a lot of allies that the small States will have, of a very unexpected character, including me.

Be that as it may, however, is there anything, Mr. Fortas, that you feel in all of your past associations, business, social, investment, of any character or condition, in the greatest conscience, facing probably the most awesome responsibility of your life personal and professional that would prevent you from administering in this office the standards of the bar with which as a distinguished lawyer and of the bench you are as familiar as anybody in this country?

Mr. FORTAS. There is absolutely nothing, Senator. My only hope is that I have within me the capacity, the wisdom and the personal qualities which will permit me to discharge these great and really awesome responsibilities with credit to myself and to the Government of the United States.

Senator JAVITS. As one of your peers I feel you do.

I have no further questions, Mr. Chairman.

Senator HRUSKA. Mr. Chairman, I would just like to make this observation.

My views and my convictions on the *Reynolds v. Sims* case and the 14th amendment was not only well known, but they were as firmly voted yesterday afternoon as I could assert with my voice.

Notwithstanding that and notwithstanding my sympathy for the questions in Senator Fong's mind I want to say that I feel the nominee has given the only answer that he could give when he said he does not have an opinion on it.

We have always felt that it would be unfair to ask any nominee for any judicial office to give a legal opinion on the basis of a hypothetical question.

Obviously if a question of this kind arose it would be well briefed, it would be voluminously and extensively researched, and it would be argued at great length; so the answer that Mr. Fortas has given, in my judgment, is in compliance with the only course of action open to him.

Senator ERVIN. And as a lawyer, will you not agree with me, that judges are more competent of handing down a decision after they heard the facts?

Mr. FORTAS. Yes, I always felt that way, too, Senator.

Senator HRUSKA. We can furnish the light but we cannot furnish the understanding necessarily.

Senator HART. Mr. Chairman, the able junior Senator from Maryland is out of the city to honor a longstanding commitment. He has asked me to state for the record that he regrets this, but that he supports fully the nomination and commends the President and the Attorney General on the recommendation.

Mr. FORTAS. Thank you, Senator.

Senator HART. You may wonder, Mr. Fortas, about our persistence in asking for opinions, if you are surprised. You know we are very reluctant without briefs or the benefit of both points of view to express opinions on these things all the time.

Mr. FORTAS. I must say, Senator, that it requires considerable restraint on my part to avoid engaging in a discussion of these questions no matter how uninformed I am, and I am uninformed on these particular points.

Senator ERVIN. I say that is because we operate on a different principle.

Mr. FORTAS. Yes, sir.

Senator ERVIN. If you find out what the facts are a court can usually tell what the decision is going to be, but the U.S. Senate operates on a different basis. You can't foretell what it will do, because it is like Josh Billings' mule that don't kick to no rule whatsoever.

The CHAIRMAN. The committee will adjourn.

(Whereupon, at 1:15 p.m., the committee adjourned.)

Subsequently, the following letter was received for inclusion in the record.

McLEAN, VA., August 6, 1965.

Hon. JAMES O. EASTLAND,  
Chairman, Judiciary Committee,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I requested that I be called as a witness in behalf of Mr. Abe Fortas at the hearing held by the Judiciary Committee on August 5, 1965, on Mr. Fortas' nomination for appointment as an Associate Justice of the U.S. Supreme Court. I was present in the committee room when the hearing was called to order but did not hear my name called during the hearing. I therefore respectfully request that the following brief summary of my intended statement in behalf of Mr. Fortas be made a part of the record of that hearing.

I have known Mr. Fortas for over 25 years, having first met him when he was General Counsel of the Bituminous Coal Commission and I was Counsel for the Federal Farm Mortgage Corporation in the Farm Credit Administration. From our discussions in those days of the then current legal problems I soon formed the conviction that he was a most capable lawyer, articulate, sincere, and dedicated to his profession. He has a remarkable ability to reduce complex legal

problems to their basic issues, and to consider them objectively and forthrightly. He has earned the accolade of being a "lawyer's lawyer." These convictions of his character and legal capabilities are shared by all who know him. They have been fully confirmed by his steady rise to positions of great importance in our Government's service and to eminence in the legal profession as well as by his contributions to our jurisprudence.

In all of the years I have known Mr. Fortas I have never heard a question raised regarding his legal ability, ethics, or intellectual honesty. As a member of the bar of the U.S. Supreme Court of nearly 30 years standing, I know of no more fitting choice for appointment to that Court than Mr. Fortas and I respectfully urge confirmation of his nomination.

Respectfully submitted,

LIONEL GLENN ANDERSON,  
*Counselor at Law.*