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## Book Review [Fortas: The Rise and Ruin of a Supreme Court Justice]

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## BOOK REVIEW

FORTAS: THE RISE AND RUIN OF A SUPREME COURT JUSTICE, by Bruce Allen Murphy. New York: William Morrow & Co., Inc. 1988. Pp 717. Hardbound. \$25.00.

*Reviewed by Paul Howard Zarefsky\**

The story of Abe Fortas is a truly tragic one. A lawyer of impeccable credentials who rose to become an Associate Justice of the Supreme Court, Fortas is remembered today, if at all, for the improprieties that forced him off the High Court. There will be no glowing retrospectives of Justice Fortas. There will be no treatises lauding his jurisprudential legacy. Instead, scholars inquiring into the life and career of Abe Fortas inevitably must ask: What went wrong? How did a man of such formidable intellect and legal acumen stumble so badly? Why did a man so steeled in the exercise of power, Washington style, fall so precipitously from the heights of power?

Bruce Allen Murphy's *Fortas: The Rise and Ruin of a Supreme Court Justice*, goes far toward answering these questions. Murphy, a Professor of Political Science at Pennsylvania State University, traces Fortas' life from the humble beginning in Memphis, Tennessee to the ignominious end in Washington, D.C. Along the way, the reader learns of a brilliant law student and lawyer whose professional success could never quite compensate for the insecurities of his early life. These insecurities explain, at least in part, Fortas' drive for power and money, his tendency to cut ethical corners, and his downfall.

In describing the tragic life of Abe Fortas, Murphy's book offers insights into more than simply one man's career. The reader

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also learns of the similarly brilliant and troubled career of Lyndon Baines Johnson, a man with whom the name of Abe Fortas will always be linked. Their careers had a common trajectory. They were ardent New Dealers in their youth, Johnson in Congress, Fortas in a host of alphabet agencies (e.g., the AAA, SEC and PWA) before becoming ensconced as the Undersecretary of the Interior in 1942, at the age of thirty-two. They prospered during the late Forties and Fifties, while shedding much of their populist roots. They reached the heights of power in the Sixties, when the savvy legislator became President and his trusted adviser became unofficial counselor to the President, and later Supreme Court Justice. However, before the Sixties had ended, both men had fallen from power, their careers prematurely over, their legacies uncertain, their common promise of greatness largely unfulfilled.

Indeed, Professor Murphy, who wrote the critically acclaimed *The Brandeis/Frankfurter Connection*, could well have entitled this book *The Johnson/Fortas Connection*. It is almost as much a book about the former President as about the former Justice. The reader learns that Johnson's loyalty to Fortas, while rooted in their common New Deal experiences, was cemented in 1948 when Fortas saved Johnson's political life by successfully defending in court "Landslide Lyndon's" 87-vote victory in the Texas Democratic Senatorial primary. Johnson never forgot the political debt he owed Fortas. In 1965, Johnson savored the opportunity he had as President to repay this debt by appointing Fortas to the nation's highest court.

Throughout the Johnson Presidency, both before and after the Fortas appointment, Johnson's longtime friend and ally remained a key confidant. Fortas played a significant policy role in such diverse matters as the Dominican Republic invasion of 1965, the urban riots of 1967, and, most importantly, the Vietnam War. Judged by today's standards of judicial propriety, the degree to which Fortas, a sitting Justice of the Supreme Court, served as an unpaid and unofficial adviser to the President is truly startling. One of the major accomplishments of Murphy's book is to document this dimension of Fortas' career in great detail. The book serves as a reminder that political alliances must be abandoned once the judicial robe has been donned.

The book also alerts readers to the cynical, sometimes arbitrary, and occasionally hateful environment of American politics, particularly as practiced in Washington D.C. Murphy recounts in fascinating detail Johnson's abortive attempt in 1968 to make Fortas Chief Justice upon the resignation of Earl Warren, and the subsequent

forced resignation of Fortas from the Court. The struggle over the nomination of Fortas to become Chief Justice forms the centerpiece of the book. Mythic political giants, some from the not too distant past and some who still grace the political scene, are colorfully presented. Three examples follow:

Senator Everett Dirksen of Illinois, the Republican leader on whom Johnson pinned his hopes for making Fortas Chief Justice, is vividly recalled with near affection. The book makes clear why Dirksen was known in Washington as the "Wizard of Ooze." Dirksen's public facade of naivete and simple patriotism is shown to have masked the machinations of a political operator as shrewd as Johnson himself. To Dirksen's credit is the fact that he apparently stuck to his commitment to support the Fortas nomination for Chief Justice until it became clear the nomination was doomed.

Senator Richard Russell of Georgia, dean of the Senate and longtime defender of "The Southern Way of Life," is portrayed as an honorable lawmaker of limited vision, unable to adapt to the notion of racial justice mandated by the Supreme Court over a decade earlier. Russell's role in opposing the nomination of Fortas for Chief Justice is poignantly described. Russell had been Lyndon Johnson's mentor when the future President arrived in the Senate; their relationship was almost that of father and son. That relationship was bitterly and permanently severed when Russell concluded, probably inaccurately, that Johnson was blocking the nomination of a Russell favorite to a federal district judgeship in retaliation for Russell's opposition to Fortas.

Senator Strom Thurmond of South Carolina, a former Dixiecrat who would later serve as the Republican Chairman of the Senate Judiciary Committee in the 1980's, is portrayed much more negatively. Thurmond emerges from Murphy's book as a harsh, unrelenting, and highly partisan critic of the Warren Court. His attacks on Fortas, who was hardly the Warren Court's most liberal member, as being soft on crime and obscenity, and perhaps too intellectual for American public life, leave the reader with little faith in the fairness with which Thurmond might evaluate other judicial nominees. Thurmond's insistence, during the battle over the 1987 Supreme Court nomination of Robert Bork, that ideology has no place in the judicial confirmation process, rings hollow when measured by his earlier opposition, based on ideology, to Fortas' nomination as Chief Justice.

Portraits of other politicians and judges, from Senator Robert Griffin of Michigan, who spearheaded the effort to defeat the Fortas

nomination for Chief Justice, to Homer Thornberry, the well respected federal appellate judge nominated to take over Fortas' seat as Associate Justice upon Fortas' confirmation as Chief Justice, dominate Murphy's book.

For aficionados of the Supreme Court or Lyndon Johnson buffs, Murphy's book also offers insight into the longstanding mystery of why Arthur J. Goldberg resigned as Associate Justice of the Supreme Court (thus creating the vacancy that Abe Fortas filled), and the less celebrated mystery of why Fortas, who was dead set against serving on the Court, agreed to do so. Goldberg was asked why, in the prime of his career, had he agreed to leave a job that for most lawyers is the ultimate career achievement. "Have you ever had your arm twisted by Lyndon Johnson?" was Goldberg's succinct reply. Johnson apparently intimated that as United States Ambassador to the United Nations (the post for which Goldberg left the Court), Goldberg would be a major foreign policy adviser and would play a key role in ending the Vietnam War. Johnson even suggested that this new job might lead to Goldberg's becoming the first Jewish vice president. Of course, after moving to the U.N., Goldberg had little discernible influence over American foreign policy and quickly faded into obscurity.

Johnson likewise bullied Fortas into submission, but only after a valiant attempt by Fortas to resist the President's wishes. Fortas much preferred his life of a behind-the-scenes Washington power broker to that of a judge. Both he and his wife, who were close friends of the President and First Lady, were wined and dined at the White House in an attempt by Johnson to gain Fortas' consent to serving on the High Court. These recruitment efforts having failed, Johnson resorted to more direct tactics to repay the debt he felt he owed Fortas. Following a meeting at the White House, to which Fortas had been summoned to offer advice on Vietnam War policy, Johnson simply informed Fortas that there would be a presidential press conference, right then, at which the President was going to announce the appointment of his friend to the Supreme Court. Against his better judgment (as subsequent events made so clear) Fortas finally relented and accepted the appointment.

The Murphy book, then, is a first-rate political thriller that gives a comprehensive account of the specific events surrounding the appointment of Abe Fortas to the Supreme Court, the fight over his nomination to become Chief Justice, and his resignation from the Court (prompted by revelations of his acceptance of a fee to serve on the board of a charitable foundation, one of whose principals was

under criminal investigation by the United States government). The book will likely be the definitive historical account of these events. It tells this sad story clearly and in rich detail.

If Murphy's book has a failing, it is as a biography. The book is more revealing of the events affecting Fortas than it is of Fortas himself. The reader catches glimpses of the Fortas psyche: his preoccupation with financial security, notwithstanding his considerable wealth; his ambivalence toward his Jewish heritage; his difficulty in making personal decisions, despite an ability to brilliantly advise others on personal decisions; his willingness to shade the truth to further his own interests. But a reader who hopes that this book will provide an in-depth understanding of Abe Fortas, the man, will be disappointed.

The book's failure to emphasize most of Fortas' brilliant legal career is also disappointing. Fortas' service as a New Dealer is described only through illustrative vignettes. The book's portrayal of the young lawyer-bureaucrat during the Roosevelt years lacks the encyclopedic detail with which his career during the Johnson Presidency is described. The book largely neglects Fortas' postwar life as a Washington super-lawyer. Greater revelations about this phase of his career—his multiple identities as a corporate lawyer, political fixer, and civil libertarian—would have helped the reader gain a better understanding of Abe Fortas.

Murphy's book can therefore be criticized for emphasizing the tragic "ruin" of this Supreme Court Justice, without giving adequate consideration to his majestic "rise." Notwithstanding this criticism, the book is well worth reading. The book is a success within the boundaries set by its author: to emphasize political narrative and to highlight the four years of Fortas' life during which he served on the nation's highest court. It is a first rate account of an important series of events in Supreme Court history.

