



We the People

By David Adler,
The Alturas Institute

Justice Abe Fortas: Life as a lawyer's lawyer and a Greek tragedy

Abe Fortas had always wanted to be a Supreme Court justice and, for as long as he had known him, his friend and benefactor had wanted to appoint him to the nation's High Bench.

It came as no surprise to anyone when, in July 1965, President Lyndon Johnson nominated his old friend, counselor and attorney to the Supreme Court. There were no questions about Abe Fortas' qualifications and credentials. Fortas was a lawyer's lawyer, possessed a wealth of government experience and enjoyed the admiration of the Supreme Court, which had appointed him to present arguments in landmark cases. He brought enormous political capital and was a founding partner of one of the nation's most prestigious, and courageous, law firms -- Arnold, Fortas and Porter -- that had won civil liberties cases in the era of Joseph McCarthy.

In truth, Fortas was ambivalent about his nomination to the Supreme Court. A seat on the Court meant, for him, a substantial salary cut, an issue of considerable importance to Fortas and his wife, who moved easily in Washington social circles and enjoyed luxury. The consequent financial pressures led Justice Fortas to accept extravagant remuneration for lectures and board service which, while not illegal, raised ethical concerns. Those ethical breaches were compounded by his ill-advised role as an unofficial adviser to LBJ on the Vietnam War and ultimately compelled his resignation from the Court. After four years on the Court, on the heels of a magnificent legal career, Fortas had fallen from great heights. His precipitous fall from the peaks of power and prestige is a familiar story, one told thousands of years ago by Greek poets who wrote about tragedy.

By the summer of 1965 For-

tas was as qualified as anyone in the country to serve on the Court. The son of Jewish immigrants, Fortas was born and raised in Memphis. Hard-working and brilliant, Fortas won scholarships to Southwestern College and Yale Law School, where he served as editor-in-chief of the *Yale Law Journal*. He was a protégé of Professor William O. Douglas, who became chair of the Securities and Exchange Commission and subsequently was appointed to the Court by President Franklin D. Roosevelt. Douglas opened numerous doors in Washington for Fortas, who flourished in New Deal circles and became indispensable to Harold Ickes, secretary of the interior. As undersecretary during World War II, Fortas fought against the internment of Japanese American citizens.

After the war, Fortas joined forces with Thurman Arnold and Paul Porter to create a powerful Washington, DC firm that distinguished itself as a premiere defender of American civil liberties through representation of victims of McCarthyism. His work included defense of public employees attacked by McCarthy as security risks to the nation. Fortas' firm also represented corporate interests that New Dealers consistently challenged. His practice was lucrative by every measure. By 1964 Fortas was earning more than \$175,000 a year.

Fortas was saluted by his peers as a brilliant legal strategist and courtroom advocate. The courts recognized his skills and rewarded him through the high honor of appointment to argue landmark cases, pro bono. In *Durham v. United States* (1954) he won a victory that broadened the insanity defense in criminal cases. In *Gideon v. Wainwright* (1963), made popular through Anthony Lewis' best-selling book *Gideon's*

Trumpet and a movie by the same title, Fortas successfully argued for the establishment of a Sixth Amendment right to counsel for defendants too poor to hire their own attorneys in all state felony cases.

By 1965 President Johnson was determined to nominate Fortas to the Supreme Court. Fortas had successfully represented then-Congressman Johnson before the Court in 1948 in his disputed primary election for the US Senate, which LBJ won. That victory, and other instances in which Fortas had ably counseled Johnson, was the beginning of an ill-fated relationship. Johnson was eager to repay Fortas' long service and loyalty with a seat on the Court.

Before Johnson could nominate Fortas, he needed to create a vacancy on the Court, which

he did by convincing Justice Arthur Goldberg to resign his seat to become ambassador to the United Nations. Goldberg was torn. He liked the Court and wanted to remain, but like so many others, he could not resist Johnson's importuning, "Your country needs you at the UN. I need you at the UN." Goldberg told friends, who tried to persuade him to remain on the Court, "What can do you do when your president asks you to do something for your country?"

With the "sudden" vacancy on the Supreme Court, Johnson nominated Fortas to fill it. Fortas feigned reluctance but accepted. He was sworn in on October 4. He served nearly four years before resigning in 1969. His story remains a cautionary tale.

Justice Fortas's cautionary tale: Ethical lapses required resignation

In the aftermath of Justice Abe Fortas's resignation from the Supreme Court on May 14, 1969, a decision provoked by his own ethical lapses -- political and financial -- that were themselves products of an energy and temperament better suited for legal advocacy than the cloistered environment of a monastic order, President Lyndon Johnson lamented the manner in which he had pressured his old friend to accept a nomination to the High Bench. "I made him take the justiceship," Johnson said. "In that way, I ruined his life."

President Johnson's hyperbole aside, there is a measure of truth in the role that he played in jeopardizing Justice Fortas' career on the Court. Fortas had been an adviser to LBJ dating back to his days as congressman from Texas, through his long stretch as Senate majority leader and his tenure as vice president under John Kennedy. Johnson continued to seek Fortas's advice and counsel on the Vietnam War and various domestic issues, despite the extrajudicial nature of the advisory role. Fortas's role as counselor-to-the-president was not a secret. Both men acknowledged the advisory arrangement and Fortas justified it, despite criticism from members of the Court and Congress, by observing that justices had advised presidents since the days of George Washington. Fortas was correct, historically, but over

time concerns about the ethics of judicial advice to the executive brought the practice to a crawl and when it was offered, it was hidden from public view. Johnson and Fortas were flouting norms, and judicial commentators noted the harm inflicted on the Court's reputation.

Fortas, a brilliant attorney by every measure and the author of notable Supreme Court opinions, saw his life begin to unravel in 1968 just as President Johnson nominated him to succeed Earl Warren as chief justice. The principal problem was money. Although it was common in those days for Supreme Court justices to accept speaking fees and honoraria for serving on boards of charitable foundations, Fortas accepted funds that were eye-popping by standards of the day. Fortas was unhappy with his salary as a justice. His former law partner, Paul Porter, raised \$15,000 from friends and former clients to pay Fortas to teach a summer class at American University. The amount of money for a six-week course was thought to be improper, not only among Republicans but among Democrats as well. The honorarium doomed the nomination, although the promotion was in trouble from the start because opponents attacked Fortas for advising Johnson on foreign and domestic issues. It didn't help matters that Fortas supported the Vietnam War at a time when the issue of the war was tear-

ing apart both the nation and the Democratic Party. Liberal Democrats deserted Fortas for his hawkish views and Republicans were joined by southern Democrats in launching a filibuster that forced withdrawal of the nomination.

Justice Fortas's problems, however, were just beginning. On May 5, 1969, *Life* magazine broke the story that in 1966, Fortas had accepted from the Wolfson Foundation, headed by Lewis Wolfson, a former client, a \$20,000 payment to be a consultant to the foundation. This extravagant arrangement provided that Fortas would receive \$20,000 annually, an amount that would be paid to his wife, Carolyn Agger, if she survived him. Stunning in its revelations, the article noted that Fortas may have given legal advice to Wolfson, who in turn may have dropped Fortas's name when useful. Fortas returned the check -- the first and only one ever sent to him -- after Wolfson was twice indicted.

Justice Fortas's days on the Court were numbered. The press was unrelenting in its coverage of the story. President Richard Nixon, eager for a vacancy on the Court, pushed for Fortas's departure. Attorney General John Mitchell encouraged impeachment of Fortas, but Nixon thought that too slow and promoted immediate resignation. There was no evidence that Fortas had given Wolfson any legal advice and no indication that he sought preferential

treatment for him. But his reputation was badly damaged, and the American Bar Association declared Fortas's conduct contrary to the canons of judicial ethics, specifically that a judge's behavior should be free of any appearance of impropriety.

On May 13 Fortas met with his colleagues on the Supreme Court. Chief Justice Warren focused on Fortas's lifetime arrangement with the Wolfson Foundation. William Brennan observed that "we were all stunned." Fortas indicated that he intended to resign from the Court, and no justice tried to dissuade him. Hugo Black had earlier told Fortas that he should resign in order "to protect the Court." Potter Stewart said, "You disqualify yourself from a case if you think it's right to disqualify yourself, and if you think it's right to resign, you resign."

Justice Fortas resigned from the Supreme Court on May 14. He did not want to harm the Court that he loved and explained that his resignation was "an act of conscience." The law firm that he founded and made famous refused to take him back and he created a new, highly successful firm. He returned to the Court to argue before his former colleagues and died of a heart attack days later, before the Court decided unanimously in his client's favor.

This column is supported by Humanities ND, a nonprofit dedicated lifelong learning, and the ND Newspaper Association.

Upland game seasons summarized

North Dakota's 2023 pheasant, sharp-tailed grouse and gray partridge harvests were up from 2022, according to the state Game and Fish Department.

Upland game biologist RJ Gross said the overall harvest was likely a result of more hunters, more trips and more birds in the population.

"Despite enduring one of the highest snowfall totals in history (winter 2022-23), we anticipated an increase in upland bird harvests based on increases in all our metrics (number of birds, broods, brood size and age ratio) during our late summer roadside counts," Gross said.

Last year, 53,819 pheasant hunters (up 5%) harvested 319,287 roosters (up 11%), compared to 51,270 hunters and

286,970 roosters in 2022.

Counties with the highest percentage of pheasants taken were Hettinger, Divide, Burleigh, Williams and Stark.

A total of 21,512 grouse hunters (up 5%) harvested 67,710 sharp-tailed grouse (up 8%), compared to 20,461 hunters and 62,640 sharptails in 2022.

Counties with the highest percentage of sharptails taken were Divide, Hettinger, Williams, McLean and Bowman.

Last year, 20,313 hunters (up 6%) harvested 67,481 gray partridge (up 24%). In 2022, 19,125 hunters harvested 54,553 partridge.

Counties with the highest percentage of gray partridge taken were Stark, McLean, Hettinger, Williams and Divide.

24740 ABSTRACT OF STATEMENT FOR THE YEAR ENDING DECEMBER 31, 2023 of the

SAFECO Insurance Company of America	
In the state of New Hampshire	
Total Assets	7,256,669,930
Total Liabilities	5,012,606,450
Aggregate write-ins for special surplus funds	25,141,051
Common Capital Stock	5,000,000
Preferred Capital Stock	0
Aggregate write-ins for other than special surplus funds	0
Surplus notes	0
Gross paid in and contributed surplus	733,869,024
Unassigned funds (surplus)	1,480,053,405
Total capital and surplus	2,244,063,480
Total Liabilities, Capital and Surplus	7,256,669,930

NORTH DAKOTA BUSINESS ONLY FOR THE YEAR 2023

Total Direct Premiums Earned	19,533,561
Total Direct Losses Incurred	8,272,653
Total Accident & Health Direct Premiums Earned	0
Total Accident & Health Direct Losses Incurred	0

STATE OF NORTH DAKOTA OFFICE OF THE COMMISSIONER OF INSURANCE
I, Jon Godfread, Commissioner of Insurance of the State of North Dakota, do hereby certify that the foregoing is a true Abstract of Statement, as officially filed by the Company in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this office at Bismarck, the first day of May, A.D. 2024. (SEAL)

JON GODFREAD
Commissioner of Insurance
STATE OF NORTH DAKOTA OFFICE OF THE COMMISSIONER OF INSURANCE
COMPANY'S CERTIFICATE OF AUTHORITY

WHEREAS, the above corporation duly organized under the laws of its state or country of domicile, has filed in this office a sworn statement exhibiting its condition and business for the year ending December 31, 2023 conformable to the requirements of the laws of this State regarding the business of insurance and

WHEREAS, the said company has filed in this office a duly certified copy of its charter with certificate of organization in compliance with the requirements of insurance law aforesaid,

NOW THEREFORE, I, JON GODFREAD, Commissioner of Insurance of the State of North Dakota, pursuant to the provisions of said laws, do hereby certify that the above named company is fully empowered through its authorized agents and representatives, to transact its appropriated business of authorized insurance in the state according to the laws thereof, until the 30th day of April, A.D. 2025.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal at Bismarck this first day of May, A.D., 2024. (SEAL)

JON GODFREAD
Commissioner of Insurance
(Publish May 2, 9 & 16, 2024)

24791 ABSTRACT OF STATEMENT FOR THE YEAR ENDING DECEMBER 31, 2023 of the

St. Paul Mercury Insurance Company in the state of Connecticut	
Total Assets	392,908,767
Total Liabilities	280,392,063
Aggregate write-ins for special surplus funds	172,834
Common Capital Stock	4,230,000
Preferred Capital Stock	0
Aggregate write-ins for other than special surplus funds	0
Surplus notes	0
Gross paid in and contributed surplus	99,230,274
Unassigned funds (surplus)	8,883,596
Total capital and surplus	112,516,704
Total Liabilities, Capital and Surplus	392,908,767

NORTH DAKOTA BUSINESS ONLY FOR THE YEAR 2023

Total Direct Premiums Earned	415,195
Total Direct Losses Incurred	128,577
Total Accident & Health Direct Premiums Earned	0
Total Accident & Health Direct Losses Incurred	0

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JON GODFREAD
Commissioner of Insurance
(Publish May 2, 9 & 16, 2024)

25011 ABSTRACT OF STATEMENT FOR THE YEAR ENDING DECEMBER 31, 2023 of the

Wesco Insurance Company in the state of Delaware	
Total Assets	2,227,056,326
Total Liabilities	1,627,612,416
Aggregate write-ins for special surplus funds	58,582,480
Common Capital Stock	5,000,000
Preferred Capital Stock	0
Aggregate write-ins for other than special surplus funds	0
Surplus notes	0
Gross paid in and contributed surplus	615,077,660
Unassigned funds (surplus)	-79,216,230
Total capital and surplus	599,443,910
Total Liabilities, Capital and Surplus	2,227,056,326

NORTH DAKOTA BUSINESS ONLY FOR THE YEAR 2023

Total Direct Premiums Earned	2,255,637
Total Direct Losses Incurred	390,033
Total Accident & Health Direct Premiums Earned	0
Total Accident & Health Direct Losses Incurred	0

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25143 ABSTRACT OF STATEMENT FOR THE YEAR ENDING DECEMBER 31, 2023 of the

State Farm Fire and Casualty Company in the state of Illinois	
Total Assets	54,817,312,019
Total Liabilities	31,845,490,746
Aggregate write-ins for special surplus funds	7,112,175,854
Common Capital Stock	10,000,000
Preferred Capital Stock	0
Aggregate write-ins for other than special surplus funds	0
Surplus notes	0
Gross paid in and contributed surplus	3,060,786,638
Unassigned funds (surplus)	12,788,858,780
Total capital and surplus	22,971,821,272
Total Liabilities, Capital and Surplus	54,817,312,018

NORTH DAKOTA BUSINESS ONLY FOR THE YEAR 2023

Total Direct Premiums Earned	68,945,488
Total Direct Losses Incurred	30,800,622
Total Accident & Health Direct Premiums Earned	0
Total Accident & Health Direct Losses Incurred	0

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25178 ABSTRACT OF STATEMENT FOR THE YEAR ENDING DECEMBER 31, 2023 of the

State Farm Mutual Automobile Insurance Company in the state of Illinois	
Total Assets	220,788,078,183
Total Liabilities	86,036,223,003
Aggregate write-ins for special surplus funds	111,418,257,388
Common Capital Stock	0
Preferred Capital Stock	0
Aggregate write-ins for other than special surplus funds	0
Surplus notes	10,000,000
Gross paid in and contributed surplus	0
Unassigned funds (surplus)	23,323,597,791
Total capital and surplus	134,751,855,180
Total Liabilities, Capital and Surplus	220,788,078,183

NORTH DAKOTA BUSINESS ONLY FOR THE YEAR 2023

Total Direct Premiums Earned	77,931,256
Total Direct Losses Incurred	52,356,584
Total Accident & Health Direct Premiums Earned	4,216,940
Total Accident & Health Direct Losses Incurred	3,806,709

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(Publish May 2, 9 & 16, 2024)

25263 ABSTRACT OF STATEMENT FOR THE YEAR ENDING DECEMBER 31, 2023 of the

The Phoenix Insurance Company in the state of Connecticut	
Total Assets	5,351,348,572
Total Liabilities	3,484,452,040
Aggregate write-ins for special surplus funds	2,160,427
Common Capital Stock	10,000,000
Preferred Capital Stock	0
Aggregate write-ins for other than special surplus funds	0
Surplus notes	0
Gross paid in and contributed surplus	126,369,748
Unassigned funds (surplus)	1,728,366,356
Total capital and surplus	1,866,896,531
Total Liabilities, Capital and Surplus	5,351,348,571

NORTH DAKOTA BUSINESS ONLY FOR THE YEAR 2023

Total Direct Premiums Earned	6,138,131
Total Direct Losses Incurred	7,046,778
Total Accident & Health Direct Premiums Earned	0
Total Accident & Health Direct Losses Incurred	0

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