Memphis and the Making of Justice Fortas

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I feel that my roots are here . . . and where a plant’s roots are determine its characteristics.

Justice Abe Fortas
Speaking at Southwestern at Memphis, 1966

Abe Fortas, who served on the Supreme Court from 1965 through 1969, is often portrayed as a consummate Washington insider. Beginning in the early 1930s and for his entire career, Fortas lived and worked in the nation’s capital. As a New Deal lawyer, he held positions in the Agricultural Adjustment Administration, the Securities and Exchange Commission, and the Interior Department. Afterward, he helped build the D.C. law firm of Arnold, Fortas & Porter, advising top corporate clients and taking on high-profile loyalty cases during the McCarthy Era. Along the way, he assisted Texas Congressman Lyndon Johnson in winning a disputed U.S. Senate election, thus cementing a lifelong friendship with a future President that culminated in an appointment to the Supreme Court. After his controversial nomination to be Chief Justice and his resignation from the Court, he continued to practice law until his 1982 death at his residence in Georgetown. But long before he became known as a wealthy Washington power broker, Fortas grew up in an immigrant Jewish family of modest means in Memphis, Tennessee. Justice Fortas was a creature of Washington, to be sure, but he was also in many ways a product of his hometown.

Growing Up in Memphis

The city into which Fortas was born still bore resemblance to a rough river town. Located on a bluff in the southwest corner of Tennessee, Memphis lay just across the Mississippi River from Arkansas and just north of the Mississippi state line. It had grown up as an outpost for lawless flatboat-men in the early nineteenth century—a place for brawlers, gamblers, and desperados of every sort—and later, as steamboats began to
ply the river, it emerged as a bustling center for slave traders and cotton planters. Occupied by Union forces but spared physical destruction during the Civil War, Memphis in the 1870s endured repeated epidemics of Yellow Fever, which led to death, desertion, and de-population on a massive scale. But the last two decades of the century brought an economic and demographic resurgence, as new residents, black and white, flooded into the city from surrounding rural areas. Cotton, hardwood, and, of course, river transportation dominated the economy, and the opening of a railroad bridge across the Mississippi River in 1895, the third-longest bridge in the world at the time, transformed the city into a regional hub for trade. By the turn of the century, Memphis topped 100,000 residents, making it the second-largest city in the states of the Old Confederacy. Heavily Protestant and racially divided, the city was also known for its ethnic and cultural diversity, as significant numbers of Irish, Italians, and Jews called the city home. Despite its rapid growth and rebirth, high rates of murder and crime still dragged down the city’s reputation. 3

Abe Fortas’s parents arrived in Memphis from England in 1905. Woolf Fortas and his wife Ray, as they were listed in the census, were originally from Russia and Lithuania, respectively, and they came to Memphis to join Woolf’s older brother Joseph, who, after having immigrated decades before, managed a furniture factory in the Bluff City. 4 Although Joseph and his family rented a home in the “Pinch” district of Memphis, a predominantly Irish and Jewish neighborhood on the north end, Woolf and Ray bought a home on McLemore Avenue on the south side of town. The Fortases, who later appeared in the census as “William” and “Rachel,” had three children at the time of their arrival—Mary, Nellie, and Meyer. A fourth, Esta, came along in 1907. The youngest—listed in the Shelby County Birth Records as “Abaram” but elsewhere always as “Abe”—was born on June 19, 1910. 5

William Fortas initially worked as a carpenter and cabinetmaker in the Fortas furniture factory, but for reasons that are unknown, in 1919 he parted ways with his older brother to start a business of his own. Success seemed to elude him. During the 1920s, operating out of a small storefront on South Main Street in downtown, William tried his hand at a variety of businesses—operating a jewelry store, pawn shop, clothing store, then a pawn shop again, before finally turning his business back into a jewelry store. As Joseph Fortas’s furniture business prospered and became synonymous with the Fortas name in Memphis, William struggled to establish a footing for himself and his family. During Abe’s childhood, the family moved twice, first to Linden Avenue and then to Pontotoc Street—both houses were located on the south edge of downtown in a mostly immigrant neighborhood—but it is not clear that the Fortases were upwardly mobile. Although they initially owned a home, by 1930, William Fortas, sick with lung cancer, listed no occupation for himself, and his family rented the home in which they lived. 6 Describing William Fortas as “a linguist, musician, [and] man of letters,” one writer concluded that he “had found the hard competitive world too much for him.” Rachel, who apparently never learned to read and write English, never took a job outside of the home, as she devoted herself to the raising of her family and taking care of her ailing husband. With medical bills and no steady income by that time, William and Rachel relied on their children and extended family for support. Abe later claimed that his family had been “as poor as you can imagine,” and that they had to make their way “in circumstances of limited resources and opportunity.” There is little reason to think that this was not the case. 7

Young Abe came of age during the era of Jim Crow, and the experiences of African Americans in the city reflected both the vibrancy of black life and the violence of
white oppression. At the time, blacks accounted for approximately forty-eight percent of the county’s total population. Both the Linden and Pontotoc houses lay just a few blocks south of Beale Street, so Abe grew up in the shadow of “the Main Street of Negro America.” Although not far from Memphis’s central business district, Beale Street seemed a world apart. Robert Church Sr., the city’s leading black businessman, had acquired many of the commercial properties on the street during the 1880s and 1890s, and on weekends Beale beckoned black farmers and sharecroppers from the surrounding region, who, along with the local working-class black population, created a flourishing economic and cultural life that included the blues.8 Black life on Beale obscured the tense race relations that often prevailed in the city. African Americans lived in the alley behind the Fortas family, and Fortas later recalled that he “played with Negro kids” until he went to school, which was of course segregated. Despite recollections of these innocent encounters, seven-year-old Abe surely remembered the horrific lynching that occurred in Memphis in May 1917. After the murder of a young white girl, 5,000 Memphians came out to witness the burning of Ell Persons, a black man who had supposedly confessed to the crime. After the lynching, three white men in a car tossed Persons’s charred, severed foot and head out of the car window, into a group of African American men standing on Beale Street, just a few blocks away from the Fortas home. Four years later, in 1921, a chapter of the Ku Klux Klan was founded in the city.9

Operating out of a small storefront on South Main Street in downtown Memphis (pictured circa 1910), William Fortas, father of the future Justice, tried his hand at a variety of businesses—operating a jewelry store, pawn shop, and clothing store. A Russian immigrant who was interested in music and literature, he was unable to thrive in business.
While the Klan sought to intimidate the Jewish population, Abe immersed himself in music and academics. William Fortas, an amateur musician, encouraged his son to take up the violin, and Abe relished learning to play. With a slender build and long fingers, he seemed suited to the instrument. Abe first took lessons at home from a family friend and then through a Catholic Church in his neighborhood. Eventually, he learned enough to teach others how to play. By teaching, in turn, he earned enough to take lessons through the Memphis Conservatory of Music. There he studied with Joseph Cortese, a Chicago-trained musician and the leader of a popular Memphis musical trio at the time.10

By age thirteen, Fortas was good enough to begin earning money playing. His first job had been working in a women’s shoe store, a job that Abe gladly left behind. In high school, he became director of a band, “The Blue Melody Boys,” which played two or three nights a week at a local park, allowing him to earn the impressive sum of eight dollars an evening. The band also performed at parties, as well as high school and college dances throughout the city. The fact that he could make money while making music gave him enormous satisfaction, and by the time he graduated in 1926, Fortas had earned the nickname “Fiddlin’ Abe.” In his high school yearbook, Fortas attested to his love of music in the published quotation that appeared alongside his picture: “Music is one of the most magniﬁcent and delightful presents God has given us.”11

If Abe inherited his musical interests from his father, his academic talents set him apart from the rest of his family, none of whom ever went to college. According to his mother, “Making good marks in his school work always seemed to come natural to Abe.” He went through the eight-year course of study at Memphis’s Leath Grammar School in six years, and he finished the four-year course at South Side High School in three years, graduating at the age of fifteen with the second highest average in his class. “With Abe it was study, study, study. That is the thing I remember most,” his older brother Meyer later recalled. Abe’s musical talents helped support him—and his parents—throughout high school and beyond. “Abe’s ﬁne education cost me practically nothing,” his mother observed later, just after he had completed law school. “His music and scholarships have put him where he is today.”12

Focusing on the violin and his studies must have provided Abe with the inner strength necessary to thrive as part of an immigrant Jewish family in a sea of native-born Protestants. During the 1920s, a militant form of Christian fundamentalism was taking shape throughout the South, and one newspaper at the time described Memphis as a “Baptist Citadel.” In 1921, the city appointed a three-member Board of Censors to determine the suitability and morality of theatrical performances and motion pictures. Meanwhile, the famous evangelist Billy Sunday twice visited the Bluff City during the era—ﬁrst in 1924 and then again in 1925, when Sunday spent eighteen straight days in the city preaching to huge crowds that totaled over 200,000. Like other Christian fundamentalists of the age, Sunday warned of the dangers of modernism, theological liberalism, and the teaching of evolution, while praising biblical literalism. The second of Sunday’s Memphis crusades occurred against the backdrop of the Tennessee state legislature’s passage of the Butler Act. The law banned the teaching of evolution in public schools and, later that year, led to the Scopes Trial in the town of Dayton, located about three hundred miles to the east of Memphis. In the summer of 1925, the jury’s quick conviction of biology teacher John T. Scopes for violating the statute—after two of the most famous attorneys in the country debated creation and evolution before the court—captured the attention of the city. After it was over, Memphis newspapers roundly praised
Scopes’s conviction, and Edward Hull Crump, the city’s political boss, advocated banning the defense attorney, Clarence Darrow, from the state of Tennessee.13

If Protestant fundamentalism dominated the culture, the local Jewish community nourished and recognized Abe’s talents and contributed to his educational advancement. Jews had first arrived in Memphis during the late 1830s. In 1853, the first congregation formed in the city, and some years later Jacob Peres arrived from Philadelphia to serve as the city’s first rabbi. During the first decade or so of the twentieth century, an influx of Eastern European immigrants like the Fortases doubled the Jewish population of the city, so that by 1912 six thousand Jews called Memphis home.14 Jews in Memphis were divided between Reform and Orthodox in both their religious practices and social lives, and the Fortas family belonged to the Orthodox congregation, Baron Hirsch. But it was the secularly oriented social organization that emerged out of the Orthodox community—the Arbeiter Ring—that played the most important role in the lives of Abe’s family members, who were not very religious. A philanthropic and cultural organization, the Arbeiter Ring sponsored concerts and taught Yiddish. It was at such events that young Abe came into contact with Hardwig Peres, the son of Jacob Peres and one of Abe’s eventual Memphis mentors. On one occasion at the Arbeiter Ring Hall, when Abe was very young, he recalled his mother saying to him, “See, that’s Mr. Peres.” Hardwig Peres was a pillar of the Jewish community and a civic leader in Memphis. A successful merchandise broker, Peres served as a member of the board of directors of the Memphis Chamber of Commerce and as president of the local school board. His younger brother Israel Peres attained prominence as a local chancery court judge. After Israel Peres died of a heart attack in 1925, his brother gave $25,000 to endow a scholarship for local students to attend Southwestern, a small liberal arts college that had just opened its doors in Memphis.15

After graduating from Southside High School in 1926, Abe beat out twelve other applicants to become the first recipient of the Israel H. Peres Scholarship at Southwestern.

Attending Southwestern

Originally founded in 1848 in Clarksville, Tennessee as Montgomery Masonic College, Southwestern became affiliated with the Presbyterian Synod of Nashville in 1855. Sluggish enrollments and struggling finances prompted the college to move from Clarksville to Memphis in 1925, and by the time Fortas stepped foot on campus in fall 1926, the institution was known simply as “Southwestern.” Its president, Charles E. Diehl, who had initiated the move to the state’s largest city at the request of the college’s board, had high hopes for the place. A graduate of Princeton Theological Seminary, Diehl had hired an impressive faculty—composed of a number of Ivy League alumni and a handful of Rhodes Scholars—and successful fundraising had allowed the college to begin building a grand campus in the gothic style on 124 acres opposite a large city park on the edge of the city.16

President Diehl believed deeply in traditional liberal education, as well as thoughtful moral instruction. The curriculum for the co-educational study body at Southwestern included two years of Bible, two years of English, and two years of Mathematics, Latin, or Greek, in addition to other requirements.17 Chapel services were compulsory. Although an ordained Presbyterian minister who had served as pastor of a church in Clarksville before assuming the presidency of Southwestern, Diehl was no fundamentalist. In fact, just after Fortas’s time at the College, Diehl found himself accused of heresy by a group of local Presbyterian ministers who believed he was not “sound
“—because of his liberal and modernist sensibilities, including his non-literal reading of the Genesis account of creation. Diehl was eventually acquitted of all charges in a hearing before the Southwestern Board of Directors and later in a heresy trial in his home Presbytery. His reputation suffered among the more conservative elements within the denomination, but Diehl thought it a small price to pay for the type of institution he was attempting to build. Diehl and the faculty he hired exemplified a form of early twentieth-century liberal Protestantism that exposed Fortas to a combination of serious moral reflection and intellectual open-mindedness.  

For the smart and talented Fortas, who had mostly grown up on the margins and lacked academic role models, attending Southwestern was a transformative experience. Although he apparently lived at home, Abe jumped into college life with both feet. Fortas used the money he earned from his violin playing to buy a car, and he seemed constantly on the move—from sleeping at home to studying and attending class on campus to playing gigs at local concerts and dances. He excelled in his coursework while also devoting himself to a variety of extracurricular activities. At first he considered studying music, but he eventually decided to focus his attention on English and political science. His professors loved him. “He was a very brilliant student,” Dr. A.T. Johnson, a professor of English, later noted. A history professor, John Henry Davis, echoed these sentiments. “He had one of the most incisive minds I have ever seen in an undergraduate in all my teaching experience,” Davis noted. “He saw through things into their deeper aspects more than most men do.” Fortas earned high grades—A’s with a handful of B’s—and he later expressed a deep appreciation to the Southwestern faculty who, in Fortas’s words, “opened for me new vistas into man’s past and future.”

While achieving academic success, Fortas navigated student life with aplomb. Arriving at college at the age of sixteen while most of his peers were two years older, the Jewish teenager joined a Protestant student body of some 400 students, composed of young men and women drawn mostly from the city and the surrounding region. The freshmen and sophomore classes—those enrolled since the college had moved to Memphis—including a total of ten Jews, of whom eight hailed from the Bluff City. A number of Southwestern’s students were well-to-do. Fortas stayed away from the fraternity scene and the elite campus social clubs—Jews probably would not have been allowed to join—and instead focused on reading, writing, thinking, and arguing. In high school, Abe had made a name for himself as a debater, and as a freshman at Southwestern, he participated in a mock trial about the teaching of evolution, a performance that marked the beginning of his college debate career. During three years on the college’s newly formed debate team, he reportedly won seventeen contests and only lost three, while debating such important topics as government regulation of hydroelectric power, international disarmament, and the future of the American jury system. The Southwestern team travelled to schools throughout the middle of the country, and these debate trips—to places such as St. Louis—were no doubt Fortas’s first opportunities.
to travel far outside of his hometown. He eventually served as president of the debate club, known as the "Quibbler’s Forum."  

Aside from debate, Fortas took an active part in other student activities and organizations. He oversaw the poetry section of the college’s literary magazine. He was inducted into both the national honorary fraternity for leadership, Omicron Delta Kappa, and the literary honor society, Sigma Upsilon, the latter of which he also served as president. In addition, he served as secretary-treasurer of Alpha Theta Phi, a scholastic honor society and forerunner to the college’s Phi Beta Kappa chapter. Most interestingly, Fortas joined about a dozen-and-a-half students and a handful of faculty members as part of a campus philosophical club known as the "Nitists." "Each member," according to the yearbook, "contributes a paper during the course of the school year and reads it in meeting, whereupon it is discussed by others." According to a friend’s recollection, Abe presented on the topic, “Is Life Worth Living?” and concluded in the negative. For one who questioned the value of life, Abe certainly lived it to the fullest, never slowing down while in college. Noting his numerous interests and accomplishments in referring to these years in his life, one newspaper reporter described him as “a natural born hustler.”

Music also continued to be important to Fortas’s social life during his college years. He played in the Southwestern orchestra and during his sophomore year served as its...
director. But apart from any formal responsibilities, he continued to play the violin for all sorts of occasions, as is evident from articles in the student newspaper. In Spring 1929, he conducted two orchestras that provided the musical entertainment for the Men’s Pan-Hellenic Council’s “All-Greek” annual dance. That fall, he joined with a group of students who went on a local radio station to promote an upcoming football game between Southwestern and the University of Arkansas, playing a piece on his violin as part of a program that included vocal solos and school cheers. Such was Fortas’s reputation that one article, in describing the music to be played at a fraternity “tea-dance,” noted that “collegians will tap the floor to measured beat and the jazz tunes of Abe Fortas and his orchestra.” It seemed that any cluster of musicians that collaborated with Fortas took his name. Playing the violin served to reinforce the work ethic, precision, and discipline that Fortas exhibited in other aspects of his life. In other words, violin not only rounded out his academic interests, it also shaped his personality and his relationships. While classmates enjoyed Fortas’s musical talents, they also respected his maturity, humility, and confidence.

In college, finally, Fortas developed an activist streak that set him apart from many of his classmates. His studies in literature and politics, Bible and philosophy no doubt prompted the young scholar to consider his own place in society as a Jew, as well as that of others—African Americans and the poor—who existed on the margins. He certainly saw himself as an outsider. During his junior year, Fortas served as the president of the independent “non-fraternity club” and urged his fellow students to vote for socialist candidate Norman Thomas for President of the United States. At the end of that year, he tried his own hand at politics when he unsuccessfully ran for student body vice president. And as president of the Nitist club, he invited the leading local African American minister to speak on the Southwestern campus. Fortas later recalled that this was “the first Negro who had ever come there” and the first time he “shook hands with a Negro.” Reflecting on how his liberal racial attitudes took shape, Fortas later mused, “It must have been sometime when I was in college, and it must have been the result of thinking or reading or something” that caused his own views to develop on the subject.

In the spring of 1930, Fortas graduated with honors from Southwestern and, with the help of President Diehl and Hardwig Peres, secured a scholarship to law school. Having decided to pursue the law, Fortas considered Harvard and Yale, and both men did all they could to assist him. Diehl had gotten to know Fortas well during his time at the college. His academic accomplishments and musical talents, in addition to the fact that he was Jewish and younger than his peers, made Fortas stand out among the student body. Diehl liked him and wrote strong recommendations on his behalf. Describing Fortas as “one of our first honor men,” Diehl made clear that Fortas did not have the means to attend law school. “His people are poor,” Diehl wrote to Harvard Law School, “and he has secured his education by means of his own efforts, aided somewhat by friends who know and believe in him.” Diehl went on: “The boy really needs all the help he can get, and you would not regret bestowing a scholarship upon him. He is a young man who will be heard from, and I commend him to you for your very careful consideration.” Peres favored Yale, and he again played a crucial role in charting young Abe’s course. Israel Peres, the former Memphis judge, had attended Yale as both an undergraduate and law student, and Hardwig Peres wrote to Yale explaining that Fortas had been the first recipient of the Peres Scholarship at Southwestern. Playing up the rivalry between the two law schools, Peres also noted that the president of Southwestern was “corresponding with Harvard to get one of their scholarships.” Peres continued, “[B]ut of course I
would prefer Yale.” At the same time, Peres wrote to his friend Diehl, asking him to write a recommendation to Yale, a request with which Diehl happily complied.28

Because of Peres, young Abe preferred Yale. After completing the scholarship application that Peres had arranged to have sent to Fortas, the soon-to-be Southwestern graduate expressed his gratitude to Peres. “Nothing could be closer to my desire than to have the opportunity of going to Yale; not merely because of its excellence, but also because there I may have the opportunity—not of rivaling him whose memorial scholarship I now hold, but of following in his footsteps,” Fortas wrote.29 Fortas earned admission to both schools, which was apparently no great feat at the time. During the 1930s, both Harvard and Yale admitted large entering classes and then eliminated two-thirds of their admitted students through strict grading. More important was the fact that Fortas earned scholarships to both schools—quite an achievement during the Depression, a time of intense competitions for such awards. The Yale scholarship paid a bit more, which only confirmed Fortas’s preference for following Peres’s path. At that point in his life, Fortas had spent little time outside of the South. Although he had travelled with the debate team and had spent part of the summer in 1929 taking two courses at the University of Wisconsin, the young southerner had never been to the East Coast.30

**Maintaining Hometown Ties**

Yale Law School marked the start of Fortas’s professional career, but Memphis continued to hold an important place in his life. His mother, siblings, and extended
family all remained in the Bluff City, and he would return from time to time over the next several years for visits. More important, having successfully launched Fortas to the top echelon of American legal education, his Memphis mentors continued to offer support and counsel from afar. Diehl and his young protégé formed a solid bond soon after Fortas’s graduation from Southwestern. Midway through Fortas’s first year at law school, in December 1930, William Fortas succumbed to cancer. Abe stayed in New Haven, choosing not to make the long, expensive train trip back home for his father’s funeral.31

The Diehls did all they could to offer support. Mrs. Diehl called on the widow Fortas at the family home, and President Diehl wrote to Abe to offer condolences. In his letter, Diehl recalled first learning of William Fortas’s illness. “I well remember the day when you and I were going to have a talk, and your father was taken sick,” Diehl wrote. “Instead of having our meeting you had to go to the Baptist Hospital, and we never did have that talk that I have wanted to have with you. Sometime when you are home on vacation, we will have it.” Diehl went on, in a pastoral way, to discuss how his religious faith served as a “great consolation” at the time of his own father’s passing. Touched both by Mrs. Diehl’s visit to his mother and President Diehl’s words of comfort, Abe sent an extended handwritten letter of thanks. Acknowledging the “kindness, genuineness, and thoughtfulness” of Diehl’s letter, Fortas expressed his deep gratitude. “I treasure in my heart what you have done,” he wrote. Abe went on to discuss his studies at Yale—which he described as “grueling”—and promised to see Diehl that summer when he returned home.32

In subsequent years, Diehl and Fortas developed a warm relationship based on mutual admiration and respect. Fortas graduated from Yale in 1933, and he immediately landed both a teaching post with Yale and a position in the Agricultural Adjustment Administration (AAA) in New Deal Washington. For the next five years, Fortas commuted back-and-forth between New Haven and the nation’s capital. From Memphis, Diehl watched Fortas’s rapid rise. The Southwestern president undoubtedly enjoyed his conversations and correspondence with Fortas, for whom he had great affection. Diehl also saw the value in promoting the success of the young alumnus. In the aftermath of Diehl’s trial for heresy, during which Southwestern’s reputation had suffered, in fall 1933 Diehl confided to Fortas some of the troubles the college was experiencing. “As you know, there are some people down this way who are not friendly to us,” Diehl wrote. “I hear that some of them are circulating reports around Memphis to the effect that Southwestern is not much of a college, that its credits are not accepted by other institutions, and that the State Teachers College [now the University of Memphis] far outranks Southwestern.” Dismissing such talk as “rubbish,” Diehl asked Fortas to attest in writing to the value of his education at the school—to reiterate the words that he had expressed in person to Diehl the previous summer.33

In a spring, 1934 reply, Fortas offered an endorsement of his undergraduate experience. Not only did he reveal that he had recommended Southwestern to a Yale law professor and his wife, who were discussing where to send their son to college, Fortas also described his educational background as on par with those of “graduates of the large eastern universities.” More to the point, Fortas spoke disapprovingly of the “standardization of personality” at the more established East Coast institutions and praised the atmosphere at Southwestern, “where playing chess with the professors is a favorite indoor sport, and where the influence of people in daily contact with the realities of city life is very noticeable.” The following year Diehl saw fit to place Fortas on a list of notable alumni, used for purposes of promotion and development,
which included two U.S. Senators, a former U.S. Solicitor General, and former U.S. Attorney General. Only a handful of the alumni on the list had earned their degrees during the new century. By 1934, only four years after his graduation, Diehl obviously took great pride in Fortas’s achievements. For many years afterward, Diehl reportedly kept a copy of Fortas’s senior thesis on his desk as an example of what Southwestern’s best students could accomplish.34

Memphis newspapers also took an interest in Fortas’s career. During the 1930s, the Memphis Commercial Appeal, the morning paper, and the Memphis Press Scimitar, the afternoon paper, provided extensive coverage of Fortas’s professional advancement. The Commercial Appeal noted in March 1933, that he had become editor of the Yale Law Journal and written an article on wage assignments in Chicago and later that year covered his hiring by the Agricultural Adjustment Administration under General Counsel Jerome Frank. When he came home to visit family in 1937, the Press Scimitar made his return to Memphis a headline story, and when in 1939 he left the Agricultural Adjustment Administration to become counsel for the Public Works Administration (part of the Interior Department), the paper even editorialized about Fortas’s success, seeing it as a chance to tout the education that the city had provided to the young man. “Memphis is honored every time one of its citizens is honored . . .” the Press Scimitar wrote. “Memphis has great educational opportunities and they are available to those who have the ambition and determination to take full advantage of them.”35 Although these articles uniformly took note of Fortas having graduated from Southside High and Southwestern, none of the newspaper coverage of his early career mentioned that the successful young Memphian was Jewish. Civic pride seemed to matter more than his religious preference.

Meanwhile, Fortas maintained strong connections to Hardwig Peres and the Memphis Jewish community. Although he married a Protestant from the Northeast, Carolyn Eugenia Agger, in 1935, Fortas remembered his roots. When a prominent Memphis Jew, Sam Shankman, published a history of the Peres family in 1938, he asked Fortas to write a brief recollection of Hardwig Peres in the form of a letter to Peres, which the author included as a foreword to the book. “For many years, I thought of you with awe,” Fortas wrote. “. . . Not until I entered Southwestern did I really meet you, and not until some years thereafter did I have the assurance and maturity to talk with you as boy to man.” Fortas went on: “Awe yielded to admiration; and admiration to respect and affection. I hold no man in greater esteem than you.”36

Like Diehl, Peres valued his friendship with Fortas, and he made continued efforts to assist the young man. When Fortas was serving as assistant director of the Public Utilities Division at the Securities and Exchange Commission (SEC), Peres apparently lobbied on Fortas’s behalf for him to secure one of the leadership positions at the SEC. In an April 1939 letter, Fortas thanked his patron in advance for offering to communicate with U.S. Senator Kenneth McKellar and Congressman Walter Chandler on his behalf. Although grateful for the help, Fortas, by this time an experienced New Dealer, frankly acknowledged that anti-Semitism in Washington limited his opportunities. He noted in the same letter to Peres that it was impossible for him to have been appointed to serve with his friend Jerome Frank at the SEC, “because that would result in two Jews being on the SEC . . . a thing which in the present climate of opinion is neither possible nor desirable.”37 Nevertheless, Fortas continued to rise, and in the summer of 1942, after serving briefly as general counsel of the Public Works Administration, became Undersecretary of Interior. Harold L. Ickes, who went on to become the
longest serving Secretary of the Interior in U.S. history, made him his right-hand man. In the midst of World War II, Fortas continued to confide in Peres. The first political controversy of Fortas’s career came in the summer of 1943 when New Deal critics objected to Fortas’s draft reclassification at the behest of President Franklin D. Roosevelt and Secretary Ickes. At the time, Fortas actually held a number of positions in government, and his expertise on matters of policy—through his membership on various government committees and commissions—ranged from petroleum to Puerto Rico. Fortas knew how to get things done in Washington, and Ickes thought him an indispensable man. Still, when some congressional Republicans mounted character attacks, some of which included anti-Semitic remarks, Fortas chose to resign his position and enlist. The criticism stung. Fortas wrote to Peres throughout the wartime controversy. “I could not escape the feeling that another attack on a Jew in connection with the deferment issue would do tremendous damage to all Jews in this country,” he wrote in September 1943. “This last consideration weighed most heavily with me. I felt that if there were in the future a strong wave of anti-Semitism in this country, I should never be able to evade the feeling that I had somewhat contributed to it.” Fortas confided to his old friend, “I hope that I have done the honorable and decent thing.” He concluded the letter with a statement about the sacrifices of public service, perhaps foreshadowing the financial scandals that would plague him at the end of his career. “The plain fact is that people generally do not understand the disadvantages and hazards of honest public service in a conspicuous post,” he wrote. “They do not realize that it involves absolute rejection of financial or economic benefit.” After resigning his position with the Interior Department, Fortas enlisted in the Navy, but within a month found himself discharged from the service for medical reasons—for “ocular tuberculosis,” an eye condition that had afflicted him a few years before.

The controversy over Fortas’s draft status eventually blew over, but Peres’s influence lingered. As Fortas wrote to Peres about these events, Peres responded by sending Fortas clippings of the Memphis newspaper coverage. The hometown papers demonstrated remarkable loyalty to Fortas throughout the controversy—they still never referred to his being Jewish—and one newspaper item announced that Fortas would be returning to Memphis, during which an open house would be held in his honor at the home of his brother Meyer. “All friends of the family are invited to call,” the piece concluded. Peres, who was surely among the callers, remained active in Memphis on Fortas’s behalf. After Fortas’s discharge from the service, Roosevelt re-nominated him for his old position at the Interior Department, and Peres wrote to Senator McKellar and enlisted others—including Diehl—to lobby them as well. Meanwhile, Fortas told Peres about his work on “Persian Gulf oil problems.” “In connection with this work,” Fortas explained, “I have been getting some information about Palestine. I hope that when I am in Memphis in March you will take time to talk with me about that problem.” Peres, a lifelong Zionist, continued to exchange letters with Fortas over the next few years on the matter of a Jewish homeland, and Fortas too came to embrace the Zionist position.

Meanwhile, Diehl and Southwestern continued to tug at Fortas. After delivering a speech at the City College of the City of New York in the fall of 1945, Fortas sent a copy to Diehl, who remained at the helm of Southwestern. Rather than a simple acknowledgement of the speech and accompanying note, Diehl instead offered a lengthy critique of the ideas of the alumnus. “With most of your address I am in hearty accord,” the college president wrote. But he went on to gently admonish Fortas that he had left God out of his discussion of morality. “As you know quite well, most people are not guided
by reason, but by emotion, and I do not believe that we can have a just and enduring peace by relying upon reason, enlightened self interest, or mere material possessions,” Diehl wrote. “Somehow I believe that we have got to have a higher authority than man’s reason, a Divine authority, which we who are made in His image must obey, One to whom we must give account.” The genteel Presbyterian pastor reminded the nonobservant Jew of a conversation that they had had many years before in Diehl’s office about religious faith, and Diehl concluded the letter by noting that he had included a copy of a sermon written by a Presbyterian pastor friend and fellow Southwestern alumnus.

The following June, Fortas returned to Southwestern, at the invitation of Diehl, to deliver the “Alumni Day Address” during the commencement celebration. It was a warm Memphis homecoming for Fortas, who, after a decade-and-a-half of important government service, had recently left his position at the Interior Department to start the D.C. law firm Arnold & Fortas with his old Yale professor and New Deal associate Thurman Arnold. The largest Alumni Day crowd in the college’s ninety-eight-year history attended the event, and the audience included Fortas’s family members, as well as both Diehl and Peres. A few years before, the Press Scimitar had referred to Fortas as “one of Washington’s brilliant young men,” and on this occasion the paper offered an adoring account of the former Memphian, calling him “probably Southwestern’s outstanding graduate” and proudly quoting Fortas in saying that he considered Memphis “[his] first home.”

In his 1946 speech at the college, “An Approach to Progressive Policy,” Fortas offered a vision of an activist government at home and abroad, one that would combat the threats of famine and fascism overseas while tackling inequality and injustice in the United States. Perhaps taking some of the advice that Diehl had offered six months earlier, Fortas offered at least one direct reference to the connection between religion and morality, when he alluded to the dangers posed by atomic weapons: “Man’s technology has so far out-stripped man’s sociology that we are like a child who knows how to kill but is completely ignorant of the Sixth Commandment.” Fortas concluded the speech with a call to action and an appeal to the role of Southwestern and other higher educational institutions in bringing about the change that he believed was required.

Most strikingly, Fortas made a handful of references to the issue of civil rights. Eight years before Brown v. Board of Education, Fortas urged his white southern audience to rethink their commitment to racial segregation. “It seems to me that our domestic problem and specifically the problem of the South must also be dealt with positively,” he stated. “...
must not fall into the trap of assuming that what is must be divinely right and must at all costs be protected from change.” Fortas continued: “We must realize that in this country of ours the democratic and constitutional promises of opportunity for liberty and the pursuit of happiness are not the exclusive possessions of a few. They are the rights of all.” It would be another eighteen years before the first African-American students would enroll at Southwestern, and Memphis remained a deeply segregated city, but in his 1946 speech, Fortas offered a bold vision for the future of the college and the country. The minutes of the college’s meeting of the Board of Directors later referred to the speech as “the high point of the year,” and the college published and widely distributed Fortas’s remarks, apparently without controversy. The Press Scimitar also carried a favorable account, although it focused on Fortas’s foreign policy recommendations rather than his comments about segregation.

During the late 1940s and 1950s, Fortas lost some of his most important personal connections to Memphis. Just a few months after the speech at Southwestern, his mother Rachel died of a heart attack at home after a long illness. Two years later, in November 1948, after a lifetime of service to the Memphis Jewish community, the venerable Hardwig Peres passed away at the age of eighty-nine. Appropriately, Fortas made a generous gift to the Israel H. Peres Memorial Fund in memory of Hardwig Peres, thus helping to allow future generations of Memphians the opportunity to study at Southwestern. In 1949, Charles E. Diehl retired as president of the college, and Peyton N. Rhodes (for whom Southwestern was renamed in 1984) assumed the presidency of Fortas’s alma mater. Meanwhile, Diehl and Peres’s common interest in Fortas—in whom both had taken such pride—seemed to have built an unbreakable bond between the Presbyterian college president and the Jewish businessman. They began corresponding at the time Peres endowed the scholarship for young Abe, and Peres proved to be one of the college’s most important Memphis benefactors. Diehl responded to Peres’s generosity by bestowing an honorary degree upon Peres in 1935, and the following year Peres donated an oil portrait of his brother Israel to the college. When Diehl warmly received it, Peres wrote to Diehl, lauding his “broad spirit as a wonderful asset to this community.”

Still, if Fortas lost some of his personal ties to his hometown, the relationships with family members, as well as with Southwestern and the Peres family, endured. His siblings and their children remained in the Bluff City, and his nephew Alan, the son of Abe’s brother Meyer, went on to become a member of Elvis Presley’s famous “Memphis Mafia.” Meanwhile, Southwestern maintained a strong relationship with its notable graduate. Fortas continued to give regularly to his alma mater, and he occasionally represented Southwestern at ceremonial occasions in Washington, such as the inauguration of Georgetown’s president in 1949. “I am honored to represent Southwestern anywhere and at any time,” he wrote at the time. President Rhodes corresponded with Fortas for several years and called him on the telephone when he had occasion to be in Washington. In 1955, Rhodes invited Fortas back to campus to speak at the alumni luncheon at his twenty-fifth reunion, at which time Fortas made the rounds in town, visiting with family members and talking with old friends. Hardwig Peres’s nephew, Hardwig “Harvey” Peres Posert, meanwhile, carried on the tradition of community service in Memphis that had meant so much to his uncle, including championing the Israel Peres Scholarship at Southwestern. When Posert died in March 1958, Fortas made a gift to Southwestern in his memory. “As you know,” Fortas attested in a note to President Rhodes, “my life was deeply affected by my association with the Peres family.” And Memphis newspapers continued to cover Fortas’s
career with gusto. Of course, his appointment to the U.S. Supreme Court by President Johnson in 1965 prompted a fresh round of Memphis media profiles of the hometown boy who had fiddled his way through Southwestern, made a name for himself among Washington’s rich and powerful, and landed a seat on the nation’s highest court. To all Memphians, it seemed, Fortas was a great source of civic pride.

The Making of a Justice

What does it mean to say that a person is a product of a place—to say that Memphis helped to make Justice Fortas? Certainly, it was in Memphis that Fortas learned his earliest lessons about life. It is where he formed family relationships and first friendships as a youth. It was where he acquired the skill and discipline to play the violin and where his mind expanded during his college years, beyond the immediate confines of his humble environment and into other realms of human culture, achievement, and possibility. But apart from these fundamental elements of personality, his Memphis upbringing also helped to shape some of Fortas’s specific attitudes about law and justice. This influence was evident in at least three areas.

First, the experience of growing up poor in Memphis—living on the edge of society during his childhood years as his father
attempted to support his large family—surely affected Fortas’s ideas about protecting the legal rights of the poor and marginalized. A pair of scholars who have analyzed the socio-economic backgrounds of the Justices of the Supreme Court describes Fortas, along with Thurgood Marshall, as one of the two most “underprivileged” Justices to ever occupy a seat on the Supreme Court.51 When he first joined forces with Thurman Arnold in 1946, Fortas began a successful and lucrative career as a D.C. corporate lawyer, but because Fortas did not have the advantages enjoyed by others growing up, he sympathized with the plight of the poor and frequently referred to promoting the values “of compassion, of understanding, and of justice” in law and society.52 For a corporate lawyer, Fortas retained, as Anthony Lewis put it, an unusual interest in the “philosophy of criminal law,” as he frequently wrote and spoke on the subject.

Specifically, Fortas took a deep interest in indigent defendants securing the right to counsel. When the Justices asked him in 1962 to take the case of Clarence Earl Gideon, a drifter convicted of petty theft who had submitted an in forma pauperis petition to the Supreme Court from a Florida jail cell, Fortas embraced Gideon’s cause. Knowing that arguing the case gave him a chance to convince the Court to overturn its 1942 decision in Betts v. Brady, which had denied that the right to counsel applied in state cases except in special circumstances, Fortas relished the opportunity. According to Lewis, Fortas and his associates spent months building an argument that the Sixth Amendment required the protection of the right to counsel for defendants accused of serious offenses in state courts. In Lewis’s words, “[Fortas’s] oral argument was as thorough, as dramatic, as suave and—most important to the Justices—as well-prepared as anything that could have been done for the best-paying corporate client.”53

Fortas won Gideon’s case, as in 1963 a unanimous Court in Gideon v. Wainwright overruled Betts and held that the right to counsel was included among the rights incorporated by the Fourteenth Amendment to apply to the states. It might not only have been Fortas’s poverty that prompted his devotion to the right to counsel for poor defendants. Perhaps Fortas knew that in 1917, during his childhood, Memphis had established the first public defender east of the Mississippi River, only the third public defender office in the nation at the time. Regardless of whether he was aware of this bit of legal history about his hometown, Fortas believed deeply in the cause. As he noted in another speech at Southwestern, in 1966, Fortas felt that, with the due process revolution in cases such as Gideon, the Supreme Court was helping to bring about “the extension of the benefits of law and of our material achievements to all people and not just a fortunate few.” In an interview that same year, Fortas lamented the sad state of legal services for the poor. “Lawyers have been the tool of the enemy—out of reach of the poor . . . Our traditional system of voluntary legal aid and legal aid societies is totally inadequate . . . Only about 10 per cent of those persons needing legal aid are actually serviced,” he argued.54 Even if the Court was eager to hear Gideon and overturn Betts, Fortas brought a personal passion to the subject that certainly helped Gideon’s cause.

Second, the experience of growing up Jewish in Memphis during the Scopes Trial influenced his view of the appropriate place of religious doctrine in public policy. At the time of Scopes’s conviction under the Tennessee anti-evolution law, a handful of other states in the South had passed similar statutes. One of those laws, from Arkansas, came to the Supreme Court in 1968 in the case of Epperson v. Arkansas. Three years before, Fortas had reached the pinnacle of his career when President Johnson appointed him to the Supreme Court. Given his Memphis public school education during the 1920s, Justice Fortas found it difficult to distance himself
from the matter of state anti-evolution legislation. While one of Fortas’s law clerks advised against Fortas even voting to grant certiorari in order to hear the case as the state of Arkansas was not enforcing the statute, Fortas wanted the Court to get involved. In response to the clerk’s memo, Fortas wrote, “I’d rather see us knock this out.”

The Justices were united in wanting to strike down the statute, but Fortas took the lead in arguing that the Arkansas anti-evolution statute violated the Establishment Clause of the First Amendment. In the Justices’ conference, others thought the law overly vague or in violation of the free speech of teachers. Fortas had a different perspective. When asked to write the majority opinion, Fortas invoked the test laid out by the Court in 1963 in Abington School District v. Schempp, a case banning state-sponsored religious practices in public schools, in order to take aim at the statute for its sectarian purpose. Relying on a clerk’s research on the matter of the statute’s intent, Fortas framed the Arkansas case as akin to the Scopes Trial, as he started and ended the opinion in Epperson by discussing the Tennessee case, even citing autobiographies that had been written by the two famous attorneys in the trial, Darrow and William Jennings Bryan. “No suggestion has been made that Arkansas’ law may be justified by considerations of state policy other than the religious views of some of its citizens,” Fortas wrote in the opinion “It is clear that fundamentalist sectarian conviction was and is the law’s reason for existence.” He concluded by citing not the words of the Arkansas statute, but the Tennessee statute under which Scopes had been convicted. “Perhaps the sensational publicity attendant upon the Scopes trial induced Arkansas to adopt less explicit language,” he wrote, “but there is no doubt that the motivation for the law was the same: to suppress the teaching of a theory which, it was thought, ‘denied’ the divine creation of man.” Most of Fortas’s colleagues signed onto the opinion. Even if it failed to interpret the statute with precision, Fortas’s opinion nevertheless reflected the dominant notion among the justices that minority rights, including the rights of religious minorities, stood at the center of the nation’s evolving understanding of liberty. Growing up Jewish in Memphis during the 1920s—a fundamentalist place at a fundamentalist time—undoubtedly shaped Fortas’s view of the case.

Third, Fortas’s experiences of seeing segregation and racial oppression in Memphis affected his outlook on matters of racial justice and civil rights. Having first considered the reality of Jim Crow during his college years, Fortas took a progressively more liberal stance on the question of the civil rights of African Americans, as was evident in his 1946 speech at Southwestern. Two decades later, in 1966, when the college awarded him an honorary degree and Justice Fortas spoke at its opening convocation, he again addressed his southern hearers in bold terms about his—and the nation’s—commitment to the rights of all Americans. By that time, Congress had enacted the Civil Rights Act and the Voting Rights Act, and Southwestern at Memphis (as it had become known) had admitted its first black students. Fortas’s hometown was changing. In his address, Fortas lauded “the great social revolution” in American life, “a revolution directed at the emancipation and upgrading of the Negro and the poor.” With a unique southern perspective on the issues confronting the nation, Justice Fortas both praised and challenged his audience. He acknowledged the “formidable task” of the South in overturning segregation, in moving past “deep-seated customs and tradition.” At the same time, Fortas urged a wholesale embrace of these revolutionary changes, in order create a “new and more vital South—richer and greater because it more closely approximates man’s religious and moral conceptions—because it is based on the principle that all men are created equal before the law.”
During his brief tenure on the Court, Fortas demonstrated a rock-solid commitment to African Americans’ civil rights. He voted with the majority in cases upholding the Voting Rights Act, striking down the poll tax, and advancing the desegregation of public schools. He wrote the majority opinion in *Brown v. Louisiana*, the 1966 case in which he struck down as a violation of the First Amendment a Louisiana breach of peace statute that had been used against African-American civil rights protesters in a public library. But it was the Fourteenth Amendment, with its ringing phrases of “due process” and “equal protection,” that ushered in the civil rights revolution and that embodied Fortas’s career-long commitment to racial justice. In a paper on the Fourteenth Amendment delivered in 1968, in commemoration of the centennial of its passage, Fortas expressed his deepest principles on the subject. “The revitalization of the Fourteenth Amendment that has occurred in the past generation or so has . . . [brought about] the mighty accomplishments of our time,” he argued. “The great command of the Fourteenth Amendment—equality under the rule of law, protecting the fundamental rights of humanity—is, after all, basic in our religious and ethical ideals.” In 1972, after his resignation from the Court and in the midst of President Richard Nixon’s re-election campaign, Fortas offered a more intimate view. Warning against the dangers of rolling back these revolutionary changes, Fortas harked back to his childhood in Memphis. “As a Southerner—born and brought up in the Mississippi Delta—I recall the outrages of the Ku Klux Klan, directed against Jews, Catholics, and Negroes,” he wrote in an op-ed piece for *The New York Times*. It was a rare public expression of a private man’s personal commitments.

Of course, Fortas’s constitutional values—a belief in justice for the poor, freedom for religious minorities, and civil rights for African Americans—have been obscured by the ethical scandals that ended his brief tenure on the Court. After President Johnson nominated him for the position of Chief Justice in June 1968, Senators questioned the appropriateness of his close relationship to the President, as well as his acceptance of a large honorarium raised by friends and clients for his teaching a course at American University. Senate opposition prompted Johnson, who by that time had announced that he was not running for re-election, to withdraw the nomination. Nearly a year later, *Life* magazine reported that Fortas had received a sizable honorarium for serving as a consultant to a charitable foundation, a financial relationship that many viewed as unethical. After spending many months mired in controversy, on May 14, 1969, Fortas resigned his seat on the Court.

Whatever shortcomings or scandals typically associated with him, Fortas was an idealistic Justice who possessed a distinctive moral vision for society. “The Constitution is more than a set of precepts which can be enforced in the courts. It is more than a chart for litigation—it is a way of life; a national philosophy; a social theory; a political ethic; and a guide to national morality,” he argued in a 1967 speech. While we know much about the forces that shaped Fortas’s life and work—especially the legal realism movement at Yale—Johnson always treated and trusted Fortas as a fellow southern liberal, as one whose background was similar to his own. Describing him as “a man of humane and deeply compassionate feelings,” Johnson believed that, in nominating him for the Chief Justice position, Fortas would carry out the revolution in rights that had been the hallmark of the Supreme Court under Chief Justice Earl Warren. Fortas’s early life experiences—growing up poor and Jewish in a racially divided city, as well as his formative relationships with mentors Diehl and Peres—undoubtedly influenced his liberal attitudes about law and justice. Even if he ended up a consummate Washington insider, Abe Fortas was made in Memphis.
Author’s Note: The author would like to thank Regan Adolph of Temple Israel Archives, Wayne Dowdy of the Memphis/Shelby County Room at the Memphis Public Library, Bill Short of the Rhodes College Archives, DeAnna Adams of the Registrar’s Office at Rhodes, and Marcia Levy, a Fortas descendant and current Memphis resident, for their assistance. The author also acknowledges the helpful comments of Laura Kalman, Michael Nelson, and Stephen R. Haynes.

The September 23, 1966 edition of The Sou’wester reported Associate Justice Fortas’s return to campus for opening convocation. President David Alexander awarded Fortas an honorary degree, and the Justice urged his audience to embrace the revolution in civil rights.

Abe Fortas, speaking at Southwestern at Memphis for the last time, in 1981, just a year before his death.
ENDNOTES

1 Address by Abe Fortas, Associate Justice, Supreme Court of the United States, Southwestern at Memphis, Memphis, Tennessee, September 16, 1966, Rhodes College Archives, Memphis, Tennessee.

2 Fortas’s early life in Memphis receives little attention in biographies. Bruce Allen Murphy, Fortas: The Rise and Ruin of a Supreme Court Justice (New York, 1988), pp. 2-7, devotes about five pages to Fortas’s Memphis years, while Laura Kalman’s excellent Abe Fortas: A Biography (New Haven, Conn., 1990) devotes about six pages.

3 Gerald Capers, The Biography of a River Town—Memphis: Its Heroic Age (Memphis, Tenn., rep. ed., 1966); Bond and Sherman, Memphis in Black and White (Charleston, S.C., 2003), pp. 74-93; Robert A. Lanier, Memphis in the Twenties: The Second Term of Mayor Rowlett Paine, 1924-1928 (Memphis, 1979), pp. 72-74. Coincidentally, one of the most enduring histories of Memphis was written by Capers, a friend of Fortas’s and fellow member of the Southwestern class of 1930. A southern river town with a sizable immigrant population, Fortas’s Memphis was not unlike Brandeis’s Louisville—although Brandeis grew up more than fifty years before. On Louisville at the time, see Melvin I. Urofsky, Louis D. Brandeis: A Life (New York, 2009), pp. 1-24.

4 It is astonishing how little can be said with certainty about the Fortas family. The census for 1910 lists them as “Woolf” and “Ray,” whereas they call themselves “William” and “Rachel” thereafter. They are both listed in the 1910, 1920, and 1930 censuses as having been born in England. In 1910 and 1920, they also state that their parents were born in England, but in 1930, just before his death, Woolf listed his parents as having been born in Russia. In the 1940 census, Rachel, whose maiden name was Berzansky, continues to list her birthplace as England. Kalman’s biography, relying on an interview with Esta Fortas, describes Woolf and Ray as having been born in Russia and Lithuania, respectively, and having later spent time in England before coming to the United States. A history of the Fortas family, obtained by the author from Fortas descendant Marcia Levy, contains the same information. Joseph Fortas, who arrived in the U.S. in 1884, was naturalized in 1899. His naturalization record shows him as having migrated from Russia, and it is highly doubtful that the brothers were born in different countries. Still, Rachel’s 1946 newspaper obituary describes her as a native of Leeds, England. Thus, I am basing the idea of her Lithuanian heritage on Kalman’s interview with Esta Fortas and the Fortas family history.

5 Joseph Fortas and Woolf Fortas, Thirteenth Census of the United States, 1910 (NARA microfilm publication T624, 1,178 rolls). Records of the Bureau of the Census, Record Group 29. National Archives, Washington, D.C., viewed at www.ancestry.com. Nowhere else in the records or sources for this paper was Abe Fortas ever referred to as “Abaram” or “Abraham.” It was always “Abe.”


7 Charles Edmundson, “The Great Persuader,” Commercial Appeal, December 11, 1966, Mid-South Section, 13; Charles B. Seib and Alan L. Otten, “Abe, Help!—LBJ,” Esquire, 63 (June, 1965), 147. Kalman, relying on an interview with Fortas’s sister Esta, offers a slightly different assessment of the Fortas family’s socio-economic status, for Esta recalled that the family always owned an automobile and employed a domestic servant. It is hard to know—given the facts stated above—whether these were truly markers of the Fortas family’s upward mobility. See Kalman, Abe Fortas, pp. 7-8.

8 Population figures are from “U.S. Demography 1790 to the Present,” viewable at https://www.socialexplorer. com/6f4cdab7a0/explore; Preston Lauterbach, Beale Street Dynasty: Sex, Song, and the Struggle for the Soul of Memphis (New York, 2015).


11 Seib and Otten, “Abe, Help! – LBJ,” 147; Kalman, Abe Fortas, pp. 8-9; “Fortas’s Loves: Music, Law and
the wild and wooly Beale Street music scene. Not only does Dickerson imply that Fortas played on Beale Street, but he also asserts that Fortas “met the linchpins of Memphis’s underworld community of drug dealers, criminals, bootleggers, and other nefarious types.” He also implies that Fortas had a sexual relationship with the blues musician “Memphis Minnie.” None of these claims is supported by evidence or corroborated by other sources. See Dickerson, Goin’ Back to Memphis: A Century of Blues, Rock’n’Roll, and Glorious Soul (New York, 1998), pp. 38-40.

12 Edmundson, “Great Persuader”; “Fiddling Abe Fortas, 22, Leaves Memphis Dancers For High Legal Post With Uncle Sam’s Farm Bureau,” Memphis Press Scimitar, November 27, 1933.


14 Selma Lewis, A Biblical People in the Bible Belt: The Jewish Community of Memphis, Tennessee, 1840s-1960s (Macon, Ga., 1998), pp. 9, 100.

15 Lewis, Biblical People, pp. 98-99, 122-23; Sam Shankman, The Peres Family (Kingsport, Tenn., 1938), p. v. See also, Shankman, Baron Hirsch Congregation: From Ur to Memphis (Memphis, Tenn., 1957). Both of Fortas’s biographers mistakenly refer to Hardwig Peres as “Rabbi Peres.” He was not a rabbi; his father Jacob was the rabbi.

16 Raymond Cooper, Southwestern at Memphis: 1848-1948 (Richmond, Va., 1949), pp. 114-40; Southwestern: The College of the Mississippi Valley (formerly Southwestern Presbyterian University, Clarksville, Tennessee) Catalogue. (Memphis, Tennessee, 1927), pp. 22-29, Rhodes College Archives. Charles Diehl became president of the college in 1917. In 1920 the college first began making preparations to move to Memphis and changed its name from Southwestern Presbyterian University to Southwestern. Later, the institution changed its formal name again to “Southwestern at Memphis.” It was never formally known as “Southwestern College.” The college’s largest enrollment while in Clarksville was 187 students.

17 Southwestern: The College of the Mississippi Valley, p. 60.


19 “Fortas Made Hit At Southwestern,” Memphis Press Scimitar, July 30, 1965 Record of Abe Fortas, Rhodes College Registrar; Address by Abe Fortas, 1.

20 At the time, the college asked each student to indicate a “church” preference, and a total of ten students listed “Jewish.” Another smattering of students left this item blank. There were a total of 192 students in Fortas’s freshman class and 155 students in the sophomore class. I have not tabulated these numbers for the junior and senior classes, which would have enrolled at the college during the time that the institution was still in Clarksville, Tennessee.


22 “Selection of Fortas Catches Friends Off Guard,” Commercial Appeal, July 29, 1965; The Nineteen Hundred Thirty Lynx Published by the Student Body of Southwestern, the College of the Mississippi Valley (Memphis, Tenn., 1930), pp. 108-109, 115-17, 162-64.


26 Kalman, Abe Fortas, p. 12; “Four Students are Aspirants for President,” The Sou’wester, May 3, 1929; The Lynx, Southwestern (Memphis, Tenn., 1929), 45; Transcript, Abe Fortas Oral History Interview, 28.

27 Diehl to Secretary of the Harvard Law School, April 8, 1930, Charles E. Diehl Papers, Rhodes College Archives, Memphis, Tennessee. 28 Hardwig Peres to George Parmley Day, April 16, 1930, Hardwig Peres to Diehl, April 25, 1930, Fortas-Peres Papers, University of Memphis Special Collections, Memphis, Tennessee; Diehl to Charles Clark, April 29, 1930, Diehl Papers, Rhodes College Archives.

29 Fortas to Hardwig Peres, May 1, 1930, as published in Edmundson, “Great Persuader,” 16; Record of Abe Fortas.

30 Kalman, Abe Fortas, p. 13; The Alumni Magazine at Southwestern (October 1930) referred to this as the “Israel H. Peres Scholarship.” Edmundson, “Great Persuader,” 16; Record of Abe Fortas.

31 William Fortas died on December 14, 1930 of “acute myocarditis” caused by “pulmonary malignancy”—lung

Diehl to Fortas, January 9, 1931, Fortas to Diehl, February 4, 1931, Diehl Papers, Rhodes College Archives.

Charles E. Diehl to Abe Fortas, October 24, 1933, Fortas Papers, Rhodes College Archives, Memphis, Tennessee; Haynes, Last Segregated Hour, pp. 77-79. Working in the New Deal was a common career path for Jewish lawyers who, at the time, would not have had many opportunities on Wall Street. See Jerold S. Auerbach, “From Rags to Robes: The Legal Profession, Social Mobility and the American Jewish Experience,” American Jewish Historical Quarterly, 66 (1976), 249-84.

Fortas to Diehl, March 29, 1934; “A Few Prominent Southwestern Men,” Diehl Papers, Rhodes College Archives. Attorney General Thomas Watt Gregory, Solicitor General W. L. Frierson, Senator Key Pittman of Nevada, and Senator Nathan Bachman of Tennessee all graduated from Southwestern Presbyterian University, as it was called, during the 1880s and 1890s. Southwestern President John David Alexander referred to Diehl keeping Fortas’s thesis on his desk in his introduction of Fortas when he spoke on campus in 1966. See “Introduction of Abe Fortas by President Alexander, at Opening Convocation, September 16, 1966,” 4, Fortas Papers, Rhodes College Archives.


Shankman, Peres Family, p. v.

Fortas to Hardwig Peres, April 19, 1939, as published in Kalin, “Young Abe Fortas,” 98.

Fortas to Hardwig Peres, September 15, 1943, as published in Kalin, “Young Abe Fortas,” p. 101. See also Kalin, “Abe Fortas of Memphis,” Southern Jewish Heritage, 5 (1992), 3; Kalman, Abe Fortas, pp. 105-107. Excessive exposure to the sun or physical exertion, according to Kalman, could have caused Fortas to go blind.

“Abe Fortas to Visit,” Press-Scimitar, May 11, 1943; Fortas to Hardwig Peres, January 20, 1944, as published in Kalin, “Young Abe Fortas,” 105; Diehl to Senator Kenneth McKellar, January 17, 1944, Abe Fortas Papers, Temple Israel Archives, Memphis, Tennessee.

Fortas to Peres, January 27, 1944, as published in “Young Abe Fortas,” p. 106; Fortas to Peres, Peres Papers, Box 2, Folder 14, Temple Israel Archives, Memphis, Tennessee.

Diehl to Fortas, December 14, 1945, Diehl Papers, Rhodes College Archives.

“Abe Fortas’s First Speech,” Memphis Press Scimitar, May 7, 1943; “Abe Fortas, Who Saw History in Making, Returns for Southwestern Talk Tonight,” Memphis Press Scimitar, June 3, 1946. Fortas notes starting the firm in a 1946 letter to Peres. Apparently, Paul Porter joined the firm later. See Fortas to Peres, January 21, 1946, Peres Family Papers, Box 2, Folder 14, University of Memphis Special Collections, Memphis, Tennessee.


Diehl to Fortas, December 7, 1948, Diehl Papers, Rhodes College Archives. Fortas’s gift was $500.


Diehl remained in Memphis for the duration of his life—he died in 1964—but there is no surviving record of correspondence with Fortas beyond his tenure as president.

Diehl to Peres, August 27, 1936, Peres to Diehl, August 28, 1936, Diehl Papers, Rhodes College Archives.

Alan Fortas eventually wrote a book about his association with the King of Rock-n-Roll: Elvis—From Memphis to Hollywood: Memories from My Eleven Years with Elvis Presley (Ann Arbor, Mich., 1992). Many members of the Fortas family continue to live in Memphis. Many others are buried there.

Fortas to Diehl, April 1, 1949, Diehl Papers, Rhodes College Archives; Peyton Rhodes to Fortas, June 10, 1955, Fortas Papers, Rhodes College Archives; Fortas to


51 E. Digby Baltzell and Howard G. Schneiderman, “From Rags to Robes: The Horatio Alger Myth and the Supreme Court,” Society, 28 (1991), 47. Arthur Goldberg, it should be noted, had similarly humble roots.


57 Address by Abe Fortas, 5. On the integration of Southwestern at Memphis, see Haynes, Last Segregated Hour, pp. 75-81; Timothy S. Huebner and Benjamin Houston, eds. “Campus, Community, and Civil Rights: Remembering Memphis and Southwestern in 1968—A Panel Discussion,” Tennessee Historical Quarterly, 58 (Spring, 1999), 70-87.


