PS1 for 8/28/86#INVESTIGATING NOMINEES FOR CHIEF JUSTICE#Liberal Senators have been titillating the press and the pundits for weeks with their investigation of the ""sins'' allegedly committed long ago by Chief Justice-designate William Rehnquist. Writing about the trials and tribulations of other Supreme Court nominees seems to be the fashion this season, so let's recall what happened when President Lyndon Johnson tried to elevate his close personal friend, Abe Fortas, then a Supreme Court Justice, to the office of Chief Justice.#Abe Fortas was Lyndon Johnson's personal attorney, but Fortas had other clients, too. In 1955, Fortas was paid $11,000 by his client, William Hamling, to obtain a second-class mailing permit for his indecent magazine called (BF)Rogue(end BF).#Up until that time, magazines trafficking in pornography had been unable to obtain second-class mailing permits, which are extremely valuable because they mean great savings in postage. Second-class permits were supposed to be issued only for reading material ""published for the dissemination of information of a public character, or devoted to literature, to science, arts, or a special industry.''#After Fortas succeeded, the Postmaster General felt obliged to issue similar second-class permits to other indecent magazines. In 1960, a Federal court ordered the Postmaster General to issue second-class permits to two nudist magazines which illustrate, ""advocate and explain nudism and the nudist mode of living'' because, said the court, similar permits have been issued to (BF)Rogue(end BF), (BF)Playboy(end BF), (BF)Dude(end BF), etc.#In 1957, Fortas filed a brief for Hamling's Greenleaf Publishing Company, the then publisher of (BF)Rogue(end BF), arguing that the conviction of a pornographer named Roth should be set aside.#In 1965, Lyndon Johnson appointed Fortas a Justice of the Supreme Court. On June 12, 1967, Fortas voted to reverse the obscenity conviction by the Georgia courts against a paperback named (BF)Sin Whisper(end BF), published by Corinth Publications (another company owned by William Hamling). Fortas did not excuse himself when the Supreme Court heard this case involving his former client, William Hamling.#Fortas cast the deciding vote to reverse the conviction by the

California courts of an exhibitor of three nudie peep show films entitled ""0.7,'' ""0.12,'' and ""D-15,'' which had been shown in an arcade frequented by youths. The lower court, in holding these films obscene, had ruled, ""The court concludes as a matter of law that the exhibits and each of them are clearly, unequivocally and incontrovertibly obscene and pornographic in the hard-core sense.''#During 1967 and 1968, Justice Fortas voted to reverse 40 convictions of obscene movies, books and magazines. During those years, the Supreme Court affirmed only two lower court obscenity convictions, and in another case held a conviction moot. In these three cases, Fortas voted to reverse the convictions and let the guilty go free.#In (BF)Jacobs v. New York(end BF), Fortas was the only Justice who voted to overturn the conviction of the exhibitor of the obscene film called (BF)Flaming Creatures(end BF), an underground movie involving rapes and acts of male and female perversion.#This sorry record is the real reason why the Senate refused to confirm Abe Fortas as Chief Justice, and why he then had to resign from the Court altogether.#Last month, the Attorney General's Commission on Pornography completed its work and made its records available to the public. Buried in 3,000 pages of hearings was a fascinating postscript to the Fortas saga.#On January 21 of this year in New York City, retired FBI agent Homer E. Young testified before the Commission. In the course of his job, he had interviewed many big-time dealers in pornography.#One of those was William Hamling whom Young and another FBI agent interviewed in 1964. Young quoted Hamling as bragging that he did not fear prosecution for pornography because, and Young was quoting Hamling, ""I have the best lawyers that money can buy. In Hollywood I have Stanley Fleishman; in Houston, Texas, I have Percy Foreman; in Chicago I have the law firm of Bieber & Brodkin; and in Washington, D.C., I have Abe Fortas who can fix anything no matter what administration is in power!''#Young said he originally gave this testimony during 45 minutes of direct examination in a U.S. District Court case in Houston. When the Senate Judiciary Committee held hearings in 1969 on elevating Fortas to become Chief Justice, the Senate

Judiciary Committee obtained the transcript of Young's testimony.#However, said Young, ""amazingly, all the portions referring to Abe Fortas were not in the United States District Court's transcript.'' They just mysteriously disappeared.#Those were the ""good old days'' when Supreme Court Justices were selected on the basis of personal cronyism or political deals. Ronald Reagan is to be commended for basing his choices on judicial experience and personal integrity.