

Even within the court, Justice John M. Harlan stated: "This court can increase respect for the Constitution only if it rightly respects the limitations which the Constitution places on this court. In the present case we exceed that. Our voice becomes only the voice of power, not constitutional opinion."

By legislating as well as adjudicating, the court has amazed and alarmed many of our country's finest constitutional lawyers, regardless of party or social-economic viewpoints. They saw destroyed the three fundamental separations of power in our government.

The court's decisions are actually another matter entirely. And widely publicized public resentments against these—very severe—are a separate and different issue. How severe? At the time President Nixon was inaugurated a Gallup poll indicated that about 60 per cent of the American people disapproved of the Supreme Court's positions.

The court's continued twisting of the Constitution and the statutes in the cases judged has made a shambles of government by law in our country. It has so manhandled the First, Fifth and Fourteenth Amendments that the country is powerless to live and operate except in ways literally originated by the court.

The Court has leaned over backward in behalf of criminals and shown much more concern for the felons than for their victims. The lower courts, of course, have had to conform. Yet, are the "rights" of troublemakers more important than the rights of the sufferers?

Listen, for example, to Pennsylvania Chief Justice John C. Bell: "The Supreme Court's decisions which shackle the police and courts make it all but impossible to protect society from criminals and also are among the principal reasons for the near-revolutionary conditions."

The end product? The consequent loss of the freedoms which are the supposed goal of judicial lawmaking.

Law is never able to catch more than a part of life; an important and vital part usually defies and escapes legal definition. Moreover, the Supreme Court's decisions are not "the law of the land," as so often erroneously described. They are the law of the case. But, in announcing Powell's nomination and that of William H. Rehnquist, Nixon truly stated: "Presidents come and go but the Supreme Court through its decisions goes on forever." And Powell's character gives him standards for the public welfare and the ageless questions of the common good.

Lewis F. Powell believes in those standards and has followed them throughout his distinguished career, come what may.

STATEMENT OF HON. DAVID E. SATTERFIELD III, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. SATTERFIELD. Mr. Chairman, I appreciate this opportunity also to appear here this morning.

I realize the press of time on this committee and I shall not impose upon it.

It is not only an honor and a privilege to appear in behalf of Lewis Powell, but I also have the privilege to act as spokesman for the entire Virginia delegation who endorse his nomination.

I think it is a measure of the depth of that support, the fact that all of them are here this morning in person to convey their feelings and to express their endorsement of his nomination to this committee.

I cannot let the moment pass without making one brief observation.

I have known Lewis Powell all of my life and I have known him somewhat intimately the last 25 years through the practice of law and I would like to tell you that I know that he is a man of impeccable integrity. I know him to possess a tremendous intellectual capacity, a keen analytical mind which is remarkable in its inquisitive and perceptive capacity. He has an eminent record for distinguished public and professional service which has demonstrated time and again an objective, orderly, and judicious approach to problems.

Because of that record and his personal character, he is held in high esteem by the members of his profession and all who know him and have observed his service to his State and Nation. He is eminently qualified to serve as a Justice on the Supreme Court of the United States and I have no doubt he will discharge his duties in that high position with distinction.

I respectfully recommend his nomination to you without any qualifications whatsoever.

Thank you.

The CHAIRMAN. Thank you, sir.

Now, there are number of witnesses present in behalf of the nominee. I am going to call their names, ask them to stand up, and they will be granted permission to file a statement for the record.

Hon. Andrew P. Miller, attorney general of Virginia;

Oliver W. Hill, Hill, Tucker and Marsh, Richmond;

Carlisle H. Humelsine, president, The Colonial Williamsburg Foundation;

Robert E. R. Huntley, president, Washington and Lee University;

A. E. Dick Howard, professor of law, University of Virginia Law School;

J. Edward Lumbard, former chief judge of the Second Circuit Court of Appeals, New York City;

Joseph D. Tydings, I haven't seen you in a long time;

Orison S. Marden, former president of the American Bar Association;

Bernard G. Segal, former president of the American Bar Association;

Hicks Epton, president, American Trial Lawyers;

Maynard J. Toll, former president of National Legal Aid and Defenders Association; O'Melveny and Myers, Los Angeles;

Dean Phil C. Neal, University of Chicago Law School;

Geoffrey C. Hazard, Jr., Yale University Law School;

William T. Gossett, former president of American Bar Association;

E. Smythe Gambrell, former president of American Bar Association;

Earl F. Morris, former president of American Bar Association, Columbus, Ohio;

Dean Monrad G. Paulsen, University of Virginia Law School;

Dean James P. White, Jr., William and Mary Law School;

Hon. Armistead L. Boothe, former Virginia State senator,

Dean Roy L. Steinheimer, Jr., Washington and Lee University Law School.

Charles S. Rhyne, former president of the American Bar Association, Washington, D.C.;

Whitney North Seymour, former president of the American Bar Association, New York City;

Sylvester Smith, former president of the American Bar Association, New Jersey;

David F. Maxwell, former president of the American Bar Association, Pennsylvania;

Leon Jaworski, present president of the American Bar Association, Houston, Tex.;

Edmund Campbell, former president of the D.C. Bar Association, Washington, D.C.

Gentlemen, we are glad to have you.

You will be permitted to place statements in the record. Thank you.

(The statements referred to follow:)

STATEMENT OF HON. ANDREW P. MILLER, ATTORNEY GENERAL OF VIRGINIA

Mr. Chairman, members of the Judiciary Committee, the opportunity to add my own endorsement of Lewis F. Powell, Jr., to those already presented to you is a source of great pleasure for me.

One does not have to practice law in Virginia for very long before he becomes aware of Mr. Powell and his great contributions to our profession. Indeed, those contributions have been of such magnitude that the name of this worthy man is known in law offices in every state of the union.

Historically, Virginia has given our country some of its greatest leaders: Jefferson, on whose brilliant concept of government our democracy is founded; George Mason, whose vision produced the constitutional articles that guarantee to all Americans the rights we hold so dearly; and Washington, whose name honors this capital and symbolizes this country throughout the world.

Virginia, too, gave the nation its first great Chief Justice, John Marshall. It is fitting that Lewis F. Powell, Jr., practices law within a few blocks of the house in which Chief Justice Marshall lived in Richmond.

Mr. Powell is known today as the outstanding practicing attorney of the Commonwealth of Virginia. He represents an unparalleled combination of integrity, ability, and attainment—qualities that led him to the presidency of the American Bar Association in 1964 and to the presidencies of the American College of Trial Lawyers and the American Bar Foundation in 1969.

But more importantly, Lewis F. Powell, Jr., possesses the judicial temperament for the great task to which the President of the United States has nominated him. He has the quality of mind which will enable him to serve with distinction as a Justice of the Supreme Court of the United States.

It is not given to all men to have that quality of mind, yet I know of no man better endowed with it than Mr. Powell. Many men exhibit a knee-jerk reaction to the issues of the day, and render clichéd treatment in response, but not the nominee before you.

Throughout his career, Mr. Powell has been concerned about the relationship of the law to public issues. This concern has prompted him to offer his services to his state and his country on many occasions. For example, he was appointed by President Lyndon B. Johnson to the National Advisory Committee on Legal Services to the Poor. In 1968, the Federal Office of Economic Opportunity presented him its annual award for contributions to the national legal services program.

Virginia called upon him in 1967 to serve on the commission which revised the Commonwealth's constitution for the first time since 1928. Mr. Powell's imprint is clearly reflected in this new constitution, approved by Virginia voters in 1970. He has long advocated equal educational opportunities for all children and, as Chairman of the Richmond City Public School Board between 1952 and 1961, guided the smooth transition from a segregated school system to a system of integrated schools.

Now, Lewis F. Powell, Jr., has the opportunity for a new role of public service—an opportunity to serve his nation as a Justice of the Supreme Court of the United States. I respectfully urge you to give favorable consideration to his nomination. I am certain that legal historians in the future will regard him as one of the outstanding members of the Court in this century.

STATEMENT OF PRESIDENT ROBERT E. R. HUNTLEY OF WASHINGTON AND LEE UNIVERSITY

I am pleased to have this opportunity to appear before this Committee to speak in behalf of confirmation of the President's appointment of Lewis F. Powell as an Associate Justice of the United States Supreme Court. Primarily my comments might be helpful to the Committee in bringing to your attention information which you might not otherwise have, about Mr. Powell's effective role with relation to his *alma mater*.

As you may know, he is a graduate of both the undergraduate and law schools of Washington and Lee. His record in both stands as an augury of his later career. His academic distinction was of the highest order: He was a member of Phi Beta Kappa, was graduated *magna cum laude* from the School of Commerce and Administration, and was first in his graduating class in the School of Law. His qualities of character and his capacity for leadership were also evident: he served as President of the Student Body and was awarded the Algernon Sydney Sullivan Medallion which is bestowed by the faculty upon the graduates who "excels in high ideals of living, in spiritual qualities, and in generous and disinterested service to others."

You will of course have from other sources the unique record of his distinction as a lawyer, his service to his profession and to American jurisprudence, and his creative influence for good in the public affairs of his city, state and nation.

What I would like to emphasize to you is that during these years of professionally and nationally acclaimed achievements, he has continued to bring to his *alma mater* a full measure of devotion, not merely the typical nostalgic devotion of an alumnus but rather an intelligent well-informed concern. Through the administrations of three presidents of Washington and Lee and through many times of crisis and decision, he has stood by with sound advice when advice was useful and with forceful leadership when leadership was needed.

For example, in May of 1970, when campuses across the land were experiencing convulsions of an unprecedented variety, the student body at Washington and Lee was gripped by a tension which seemed to many to pose an immediate threat to the institution's stability and integrity as a center of learning. At the peak of this excitement and concern, it was Lewis Powell to whom I turned for advice—not mainly because he was then as he is now a member of our Board of Trustees, but because I knew full well from past experience of his capacity to bring to an emotionally charged problem calm objectivity and lucid insight. I do not think I have ever told him this but I should like to do so now. His quick understanding, his intuitive empathy and his seasoned confidence in the student body and the faculty gave me a perspective for which I shall be always grateful and which, I think, allowed Washington and Lee to come through those days with little bitterness and with new strength.

For the past ten years Mr. Powell has been a member of the University's Board of Trustees, a group of 18 men which works actively to provide intelligent and responsive governance for the institution. In large part because of Mr. Powell's influence, our Board is in my opinion a model exemplifying the ways in which such organizations of lay trustees can function usefully.

In routine matters and in matters of critical dimension for Washington and Lee no one could have performed more effectively. His characteristic posture of firm fairness facilitated the University's decision to seek enrollment of qualified black students. In the Board's deliberations about planning for this institution's next decade, he has repeatedly made the kinds of suggestions and raised the kinds of questions which serve to focus attention on the significant matters of policy, thus helping to guide the Board to a sharpened appreciation of its proper role. He was one of several trustees who provided leadership in a decision to reorganize the Board to provide for term membership in place of the more traditional life appointment.

Because I am a lawyer by training, I cannot resist adding a brief word about Mr. Powell's capacities as a man of the law. He has without exception the keenest analytical mind I have encountered, and is able to apply this disciplined talent with a disinterested judgment which is underpinned by deep commitment to humanity and concern for the rights of man in society. The President has made an outstanding appointment.

SUPPLEMENTARY DOCUMENTS FROM WASHINGTON AND LEE UNIVERSITY

A RESOLUTION

In recognition of President Nixon's appointment of Lewis F. Powell, Jr. as an Associate Justice of the United States Supreme Court, the Board of Trustees of Washington and Lee University wishes to enter into the official annals of this 222-year-old institution its approbation of the President's wise choice and this commentary on the great esteem in which we hold our alumnus, our friend, and our fellow Trustee.

A record of unparalleled distinction marks every association that Lewis Powell has had with the University he chose for both his undergraduate and his professional education. He was an honor graduate—Phi Beta Kappa and *magna cum*

laude—of the School of Commerce and Administration in 1929; in 1931 he graduated first in his class in the School of Law. During his first year in the School of Law, Lewis Powell served as President of the Student Body, and at commencement he was awarded the coveted Algernon Sydney Sullivan Medallion, bestowed by the faculty upon the graduate who “excels in high ideals of living, in spiritual qualities, and in generous and disinterested service to others.”

This dedication to the disinterested service of his fellow man and his total commitment to the highest ideals of his profession brought Lewis Powell again to the commencement platform of Washington and Lee University in 1960, when an admiring Alma Mater conferred upon him its honorary degree of Doctor of Laws. The following year he was elected to the University’s Board of Trustees. Upon the completion of his notable administration as President of the American Bar Association in 1964-65, Lewis Powell was invited to deliver the eighteenth annual John Randolph Tucker Lecture in Law at Washington and Lee. His brilliant discourse on a lawyer’s view of civil disobedience ranks among the finest of these annual lectures by many of the nation’s most highly regarded justices, attorneys, and legal educators.

While the many achievements of Lewis Powell both within and without his profession have drawn our respect and admiration, it is in his capacity as a Trustee of Washington and Lee University that he has won our highest regard for the qualities of analytical discernment, wise judgment, and sympathetic understanding that are found in him in rare and abundant concert. His voice in our deliberations has always been the voice of finely-tempered reason, and we have responded to this voice with trust and confidence.

While we endorse here without qualification Lewis Powell’s appointment to the bench of our nation’s highest court, we must confess to a measure of selfish reluctance. We shall no longer feel able to call upon him for such a generous commitment of his time and his attention, and Washington and Lee University will be the poorer for this. But we take comfort and joy in the fact that those attributes of Lewis Powell we admire so much, both professional and otherwise, shall now be directed to the best interests of our entire nation.

These sentiments, approved unanimously by the Board of Trustees in regular session October 29, 1971, shall be spread upon its minutes, a copy forwarded to the Committee on the Judiciary of the United States Senate, and a copy presented to our honored friend and colleague.

WASHINGTON AND LEE UNIVERSITY,
Lexington, Va., October 27, 1971.

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

MY DEAR SENATOR EASTLAND: I hope I am not presumptuous in venturing to send you a brief comment apropos the President’s nomination of Lewis F. Powell, Jr. to the Supreme Court. It has been my privilege to know him as a personal friend and fellow citizen of the City of Richmond, Virginia, for thirty-three years.

I feel sure you know of his distinguished services to the City of Richmond, along with those to the state and to the nation. It has occurred to me, however, that you might be less familiar with his services as an alumnus of Washington and Lee University and, for the last ten years, a member of its Board of Trustees. Ever since his graduation, his many talents have always been available to his alma mater, but since his election to the Board in 1961, the University has laid claim upon them to a very extensive degree. He was particularly helpful in his advocacy of the opening of the University to qualified black students in the early 1960’s and was undoubtedly a major factor in the decision of the Board of Trustees to follow that course.

My major purpose in writing this letter is to comment upon what I should regard as his ideal judicial mind. In Board discussions, committee meetings, and in other relations with him, I have observed his calm, objective approach to all problems, including those charged with some emotion. I have never seen a more patient probing for facts on which to base a decision nor a more careful interpretation or penetrating analysis of them when presented. His reasoned judgments following his analyses reveal a brilliant sense of the significant factors and of their relationship to others. Time and time again in group discussion it has been he whose formulations expressed the mind of the group.

I feel sure that I reflect the sentiment of his fellow members on the Board when I express the earnest hope that your committee will recommend confirmation of his nomination.

Respectfully yours,

JOHN NEWTON THOMAS, *Rector.*

WASHINGTON AND LEE UNIVERSITY,
SCHOOL OF LAW,
Lexington, Va., November 1, 1971.

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

DEAR SENATOR EASTLAND: As a student in the School of Law of Washington and Lee University, Lewis F. Powell, Jr. had a consistent record of excellence in each of his three years, receiving his LL.B. degree with top standing in 1931. It is significant that he was able to achieve this record in his first year of law study while serving as President of the University Student Body, the highest elective office in student government. For his outstanding contribution as a student to the welfare of the institution, the University faculty in 1929, when he received the baccalaureate degree and was elected to Phi Beta Kappa, voted to award him the Algernon Sydney Sullivan Medallion. This honor is conferred each year on that student in the graduating class who "excels in high ideals of living, in spiritual qualities, and in generous and disinterested service to others."

The words of this award were a portent of Lewis Powell's subsequent career as a member of the legal profession and public spirited citizen, maintaining those high ideals and qualities in the practice of his profession. He also gave generously of his time and talents in serving as Chairman of the School Board of the City of Richmond and on the State Board of Education of Virginia. He made the same generous contribution to the affairs of the organized bar of his state and of the nation, in recognition whereof he was elected President of the American Bar Association and served with great distinction in that office in 1964-65.

We sincerely believe that Lewis Powell possesses those attributes which eminently qualify him for service on the Supreme Court of the United States.

Very truly yours,

ROY L. STEINHEIMER, JR., DEAN 1968-
CHARLES P. LIGHT, JR., DEAN 1960-1968.

STATEMENT OF CARLISLE H. HUMELSINE

I am honored to have the opportunity to appear today to testify before you in support of the President's nomination of Lewis F. Powell, Jr. of Richmond, Virginia, to the Supreme Court of the United States.

Lewis Powell and I have been personal friends and business associates for many years. Mr. Powell, a gentleman of impeccable credentials, is, in my judgment, one of the nation's most scholarly, perceptive and capable lawyers. Furthermore, he has applied his academic and legal education and experience in both professional and related fields, so that his home state of Virginia and, indeed, the whole country have benefited from his public service.

As a trustee of the Colonial Williamsburg Foundation, Mr. Powell has also served for many years as general counsel and as a member of the executive and finance committees. In this period, I have had the privilege of working intimately with him in the development of long-range plans for the fulfillment of the educational aims and goals of Williamsburg. To these matters he has brought qualities of judgment and farsightedness that, in large measure, are reflected in all that Williamsburg stands for and means to the American public today.

In his profession, of course, he has served first as president of the American College of Trial Lawyers, president of the American Bar Foundation, the research agency of the American Bar Association, and, finally, as president of the American Bar Association, in which position he served with great dedication and distinction.

In Richmond, his home city, he served for nine years as chairman of the Richmond Public School Board, before his appointment to the Virginia State Board of Education. In these capacities, Mr. Powell's influence was an important factor in guiding the Richmond school system successfully and smoothly through the years of change and adjustment following the Brown decision in 1954—years in

which so many other school systems in Virginia and elsewhere were torn apart by disagreement and racial distrust.

As a senior member of his firm in Richmond, Mr. Powell has participated either directly or indirectly in an almost boundless variety of legal matters touching both the public and private sectors, in which his judgment, devotion to reason, and sense of fairness have been consistently applied. He has served so many public and private groups both in Virginia and elsewhere, in fact, that he will be sorely missed when his responsibilities on the Court make it no longer possible for him to continue to share his wisdom, intelligence, and integrity with those who have relied so heavily upon him in the past.

I know that I speak for many thousands of Virginians and Americans when I say that the appointment of Lewis F. Powell, Jr., as a Justice of the Supreme Court of the United States is in the finest and highest traditions of public service in this country.

STATEMENT OF A. E. DICK HOWARD

I am A. E. Dick Howard, professor of constitutional law at the University of Virginia. I appear today to support the nomination of Lewis F. Powell, Jr., to be Associate Justice of the Supreme Court of the United States.

For two years, from 1962 to 1964, I served as law clerk to Mr. Justice Hugo Black of the Supreme Court. I came away from that experience with a deepened appreciation for the Court as an institution and for the richness of the judicial process. I also came away with some appreciation of the qualities which one would hope to find in a Justice of the Supreme Court.

The affection I had for Justice Black and the respect I have for the Court are among the reasons I am here today. But a further reason is that I believe I have had an unusual perspective on Lewis Powell—a perspective from which I can draw some observations about his fitness for the position for which he has been nominated.

Lewis Powell's record of public service is already well known to you. I prefer to speak instead of qualities in Mr. Powell which I have seen at firsthand through a close working relationship—qualities which will make Lewis Powell a superb Justice of the U.S. Supreme Court.

I worked with Lewis Powell in a context not unlike that of the Court itself. In 1968-69 I was Executive Director of Virginia's Commission on Constitutional Revision, on which Mr. Powell served as a member. That commission produced the recommendations which, as revised by the General Assembly and approved by the people, became Virginia's new Constitution, effective July 1 of this year.

This revision was the first complete overhaul of Virginia's Constitution since the turn of the century. It produced a document which will help Virginia respond to the needs of education, state finance, the environment, and other areas in the closing decades of the twentieth century. Lewis Powell was a key figure in this revision.

I worked with the Commission continuously for a year. The commissioners met at frequent intervals, sometimes for two or three days at a time, to debate basic problems of constitutional government as reflected in a state constitution—the powers of government, limits on those powers, the liberties of the people. In many ways the deliberations of that Commission were as close an approximation as one could imagine to a conference of the Supreme Court.

This was no ordinary study commission. It included two former Governors of Virginia, a law dean who is now a judge of the World Court at the Hague, two men who now sit on the federal bench, three who sit on the Supreme Court of Virginia, and others of like calibre.

It is no disrespect to the other members of the Commission to say that Lewis Powell brought exceptional talents and qualities of mind to the work of the Commission. It is those talents and qualities which, with Lewis Powell's record as a lawyer and a public servant, make him so eminently qualified to take a seat on the nation's highest court.

INTEGRITY

To begin with, Lewis Powell is endowed with an unusual sense of integrity and values—a sense which has been reflected throughout his career. In the deliberations of the Commission, he sought always to appreciate the philosophical foundations and the social and ethical implications of any proposal. No man could have made a more honest and assiduous attempt to free himself of personal, business, or other considerations extrinsic to the merits of a question before the Commission.

CONSCIENTIOUSNESS AND HARD WORK

All the members of the Commission were busy men, but none more so than Lewis Powell. Yet every time he spoke to a question, the thoroughness of his research and preparation was evident. Lewis Powell is something of a legend as regards his capacity for hard work. He couples that capacity with an unwillingness to do anything but the most conscientious job of understanding a question, its alternatives, its likely consequences.

CRAFTSMANSHIP

The Commission divided itself into five subcommittees, each proposing drafts to revise various parts of the Constitution. Lewis Powell's drafts were prepared with a meticulousness and craftsmanship which any lawyer would envy. He has a keen sense of the uses of legal analysis and a marked flair for the articulation of an idea. The draftsmanship of his opinions as a Supreme Court Justice are likely to be in the admirable tradition of Mr. Justice Harlan.

JUDICIOUS TEMPERAMENT

Qualities of integrity, conscientiousness, and craftsmanship are all important to a judge. But there is one more quality which peculiarly characterizes the judicial process: the quality of judiciousness—the ability to hear and decide cases with a sense of proportion and balance, the ability to be detached and even-tempered which is so essential to the Anglo-American tradition of justice.

Lewis Powell has that judicious temperament. Time after time I have seen him able to state with clear logic a legal or constitutional question, to sum up and evaluate competing interests or factors, and to propose a moderate and judicious solution. He prefers reason to emotion, reflection to impulse, and moderation to extreme. In a tribunal beset by so many sensitive and thorny questions, Lewis Powell would be a joy for his fellow Justices to work with.

To make my generalizations more concrete, I could readily give specific examples drawn from the Commission's deliberations. However, the attorney-client relation which I had with the Commission precludes my speaking to specific questions which were resolved within the Commission. For illustrations of Lewis Powell's approach to legal problems, I turn therefore to examples drawn from matters of public record.

I believe that my own impressions—drawn from a close working relationship—are borne out by Lewis Powell's public record. I believe, moreover, that his articles and speeches, which are many, reflect the qualities which I have described.

In preparing to testify before this Committee, I have read Mr. Powell's articles and speeches. In the pages that follow, I have touched on several areas which he has developed in speeches or articles, including the administration of criminal justice, respect for law and for due process of law, availability of legal services, race and civil rights, speech and press, wiretapping, and the Supreme Court itself.

These areas are developed here, not so much to analyze Mr. Powell's views on specific issues, but more to show the manner in which he goes about addressing himself to legal and constitutional questions. What he has said in the totality of his articles and speeches tends, in my judgment, to bear out my personal impressions of him and to suggest those qualities of mind which will serve him well on the Supreme Court.

In short, I believe Lewis Powell to be superbly qualified to sit on the Supreme Court of the United States. The man readily measures up to the most exacting standards which we might ask of a judicial nominee. I hope it will be the pleasure of the Senate to confirm Mr. Powell's appointment.

Criminal justice. Mr. Powell has on several occasions voiced a doubt about the extent to which the Supreme Court has gone in interpreting the constitutional rights of the accused in criminal cases. For example, he was one of four members of the National Crime Commission who, in an additional statement to the Commission's 1967 Report, were critical of the Court's decisions in the *Escobedo*¹ and *Miranda*² cases. Voicing concern about the "adverse impact" of the decisions on law enforcement, those who signed the additional statement made several pro-

¹ *Escobedo v. Illinois*, 378 U. S. 478 (1964).

² *Miranda v. Arizona*, 384 U. S. 436 (1966).

posals, including the judging of confessions on the ground whether they are genuinely voluntary.³

At the same time, Mr. Powell and the other signers took care to say that decisions such as *Miranda* and *Escobedo* must be respected and enforced as the "law of the land" unless and until changed by processes available under our form of government. Likewise, the signers lamented the "unfair—and even destructive—criticism of the Court itself" and urged that those who would criticize particular decisions of the Court must recognize "the duty to support and defend the judiciary, and particularly the Supreme Court, as an institution essential to freedom."⁴

Finally, in seeking to redress what was seen as an imbalance between the rights of the accused and the interests of society in being protected against crime, Mr. Powell and the other signers concluded that

. . . concern with crime and apprehension for the safety of their persons and property, as understandable as these are today, must be weighed carefully against the necessity—as demonstrated by history—of retaining appropriate and effective safeguards against oppressive governmental action against the individual, whether guilty or innocent of crime.⁵

On several occasions, Powell has voiced a concern that "the pedulum may have swung too far" in the effort to assure a fair trial for the accused.⁶ He has reiterated his view that "the right of society in general and of each individual in particular must never be subordinated to other rights."⁷

On each of these occasions, Powell has invariably taken care to put his concern into a larger, and carefully balanced, perspective. In seeking a judicial approach which will help protect society from crime, Powell has urged that "there must be no lessening of this concern for the constitutional rights of persons accused of crime"; our object must be "the striking of a just and reasonable balance" between the rights of the accused and the protection of the citizen from crime.⁸ In fact, he has recognized that some of the very decisions under criticism may come to be viewed as "milestones" in the defense of civil liberties:⁹

The right to a fair trial, with all that this term implies, is one of our most cherished rights. We have welcomed the increased concern by law enforcement agencies and the courts alike in safeguarding fair trial. Many of the decisions of the Supreme Court which are criticized today are likely, in the perspective of history, to be viewed as significant milestones in the ageless struggle to protect the individual from arbitrary or oppressive government.

Further, Powell has been acutely conscious of the Court's difficult role in deciding such cases and the need, even while disagreeing with a decision of the Court, to lend one's full support to the Court as an institution:¹⁰

While there is room for considerable difference of opinion with respect to some of these decisions—and lawyers differ widely as do members of the Court on occasions—it is both unproductive and even destructive to criticize the Court itself. It must be remembered that in all of these cases, the Court was confronted with the difficult question of protecting the constitutional rights of the individual against alleged unlawful acts of government. While lawyers must feel free to express disagreement with its exercise in particular cases, few Americans would wish to undermine or limit this historic function of the judiciary.

As president of the American Bar Association in 1964–65, Powell gave concrete expression to his interest in the administration of criminal justice. On assuming the presidency in August 1964, he suggested three top priorities for the ensuing year, one of them being the launching and financing of a project to formulate minimum standards for the administration of criminal justice.¹¹ The Association's House of Delegates authorized such a project, and a number of studies, under a budget of \$750,000, got underway. Fifteen separate studies have been published;

³ President's Comm'n on Law Enforcement and Admn. of Justice, *A Report: The Challenge of Crime in a Free Society* (1967), pp. 303–08 (Additional views of Messrs. Jaworski, Malone, Powell, and Stoev). There were, of course, dissents on the Court itself, both to the decision in *Escobedo*, 378 U.S. 478, 492–99 (Harlan, Stewart, White, Clark dissenting), and in *Miranda*, 384 U.S. 436, 490–545 (Clark dissenting and concurring; Harlan, Stewart, White dissenting).

⁴ *Report*, pp. 308, 304.

⁵ *Id.*, p. 308.

⁶ "An Urgent Need: More Effective Criminal Justice," 51 *A.B.A.J.* 437, 439 (1965).

⁷ *Ibid.* See also "The President's Annual Address: The State of the Legal Profession," 51 *A.B.A.J.* 821, 827 (1965). "Civil Liberties: Repression: Fact or Fiction?" *FBI Law Enforcement Bulletin*, Oct. 1971, p. 12.

⁸ "The President's Annual Address: The State of the Legal Profession," 51 *A.B.A.J.* 821, 827 (1965).

⁹ "An Urgent Need: More Effective Criminal Justice," 51 *A.B.A.J.* 437, 439 (1965).

¹⁰ *Ibid.*

¹¹ See "The President's Page," 50 *A.B.A.J.* 811 (1964).

many of them have already had considerable impact on standards of criminal justice in this country.¹²

It is especially revealing of Powell's reasoned reaction to developments in criminal law that, despite his being critical of the *Escobedo* decision, he gave as ABA president his vigorous backing to the Association's search for means to assure that counsel be provided for indigents accused of crime. Noting that the timeliness of this effort had become more evident as a result of such decisions as *Gideon v. Wainwright*¹³ and *Escobedo*, Powell called the Association's program "essential to the realization of equal justice under law. It merits the full and active support of the entire profession."¹⁴

Powell has also expressed himself thoughtfully on other aspects of criminal justice, including fair trial and free press, and trial by jury. Powell's careful effort to seek means of avoiding publicity prejudicial to the rights of an accused while at the same time not impinging on rights of a free press I have discussed below under the heading "Speech and press." Powell has also spoken eloquently in defense of the right to jury trial in criminal cases. The jury he sees as a popular check on government, as a safeguard against political trials, and as a means to help maintain public respect for the legal system.¹⁵

RESPECT FOR LAW AND DUE PROCESS

Powell has devoted several speeches and articles to voicing his concern about civil disobedience, civil disorder and unrest, and lack of respect for the law and its orderly processes. It is obviously a subject which has engaged his particular attention. Most of these articles and speeches were written in the mid-1960's at a time that many sit-ins and other demonstrations were taking place as part of the civil rights movement. Powell has been markedly critical of the doctrine of civil disobedience, which he has called "a heresy which could weaken the foundations of our system of government, and make impossible the existence of the human freedoms it strives to protect."¹⁶ Powell has pronounced civil disobedience to be one of the "contributing causes" to "the disquieting trend—so evident in our country—toward organized lawlessness and even rebellion."¹⁷ He has documented in some detail what he believes to be the "escalation and proliferation" of civil disobedience so that civil disorder and even mob violence is committed in its name.¹⁸

Powell's strong distaste for civil disobedience is evident in his writings. But it is important to see his remarks in their larger setting. His central concern is about disrespect for law, whatever form it takes and whoever practices it. And his object is to reassert the intrinsic relation between respect for law and a free society in which individual liberties are safeguarded.

Powell's writings make this abundantly clear. He has been as quick to criticize white Southern officials as he has civil rights leaders who he believes have prompted disrespect for the processes of the law. He points out, for example, that the "first example of disobedience relating to civil rights may have been set by the Southern legislatures and officials who attempted to disobey or evade court-decreed integration of schools"—conduct which "was—as it should have been—struck down by the courts."¹⁹

Powell's writings reflect an abiding faith in the "rule of law"—one which binds judges, elected officials, and citizens alike. It is, as he sees it, a standard which is the same regardless of one's race or cause. An address which he gave in Florida in 1965 is especially revealing, for he lists a number of segments of society whom he holds equally to blame for a rising spirit of disrespect for law. These include law enforcement officers who by illegal conduct violate their duty to uphold the law, businessmen who flagrantly violate the anti-trust laws, lawyers who fail to

¹² Most of the reports of the Project on Standards for Criminal Justice have been approved by the ABA's House of Delegates, making them official ABA policy; others are in the process of approval. Reports have been prepared on (1) fair trial and free press, (2) post-conviction remedies, (3) pleas of guilty, (4) appellate review of sentences, (5) speedy trial, (6) providing defense services, (7) joinder and severance, (8) sentencing alternatives and procedures, (9) pretrial release, (10) trial by jury, (11) electronic surveillance, (12) criminal appeals, (13) discovery and procedure before trial, (14) probation, and (15) the prosecution function and the defense function.

¹³ 372 U.S. 335 (1963).

¹⁴ "The President's Page," 50 *A.B.A.J.* 1103, 116 (1964).

¹⁵ "Jury Trial of Crimes," 23 *Wash. & Lee L. Rev.* 1 (1966).

¹⁶ "A Lawyer Looks at Civil Disobedience," 23 *Wash. & Lee L. Rev.* 205 (1966).

¹⁷ "Civil Disobedience Prelude to Revolution" 40 *N.Y. St. B.J.* 172 (1968).

¹⁸ "A Lawyer Looks at Civil Disobedience," 23 *Wash. & Lee L. Rev.* 205, 216-28 (1966).

¹⁹ *Id.*, p. 210. For like criticisms of defiance of the courts as part of "massive resistance," see "Respect for Law and Due Process—The Foundation of a Free Society," 13 *U. Fla. L. Rev.* 1, 4 (1965); "The President's Annual Address: The State of the Legal Profession," 51 *A.B.A.J.* 821, 827 (1965).

defend the Supreme Court against unfair attacks, those who promoted massive resistance to *Brown v. Board of Education*, those who counsel civil disobedience and others.²⁰

Nor, in his criticisms of civil disobedience, is Powell insensitive to the fact that civil unrest manifests deeper social problems the root causes of which ought to be attacked as such. "The central causes of unrest in urban areas involve complex and deep-seated social and economic problems."²¹ Similarly, in another talk on civil disobedience, Powell concluded his remarks with a "caveat" to his plea for civil order:²²

Now, a final caveat. I have spoken as a lawyer, deeply conscious that the rule of law in America is under unprecedented attack. There are, of course, other grave problems and other areas calling for determined and even generous action. The gap between the prosperous middle classes and the genuinely underprivileged—both white and black—must be narrowed. . . .

We must come to grips realistically with the gravest domestic problem of this century. America has the resources, and our people have the compassion and the desire, to provide equal justice, adequate education, and job opportunities for all. This, we surely must do.

Asking respect for the law of those who have no genuine access to the courts or other judicial machinery is, of course, a one-sided and unfair proposition. Hence it is noteworthy that, as will be discussed below, Powell, as president of the American Bar Association, actively promoted bar efforts to make legal services more readily available to the poor and to the middle classes and was sensitive to such questions as the right and duty of lawyers to represent unpopular clients.

In many respects, Lewis Powell's uneasiness about the threat which he sees civil unrest to pose to the rule of law and to individual liberties resembles the views stated so forcefully by Mr. Justice Black in a number of Supreme Court opinions in the sit-in and demonstration cases of the 1960's.²³ Indeed, it is interesting that Powell has so often quoted from Justice Black's opinions in those cases.²⁴ The debt to Justice Black is obvious in such statements of Lewis Powell as:²⁵

And here, as a lawyer, may I emphasize that the right to dissent is surely a vital part of our American heritage. So also are the rights to assembly to petition and to test the validity of challenged laws or regulations. But our constitution and tradition contemplate the orderly assertion of these rights. There is no place in our system for vigilantism or the lawless instrument of the mob.

AVAILABILITY OF LEGAL SERVICES

One who urges that disputes be channeled into legal avenues ought properly to ask whether those legal forums are freely available to all regardless of race or economic status. Lewis Powell has taken a special interest in seeking ways of overcoming economic and other barriers to obtaining legal services and counsel.

Referring to a survey undertaken in Missouri in 1960, Powell found it especially disquieting that 74 percent of the lawyers surveyed "believed that wealth, social position, and race may affect standards of justice."²⁶ At a law and Poverty Conference held in June 1965 under the sponsorship of the Department of Justice and the Office of Economic Opportunity, Powell dwelled on the failure of the American legal system to live up to the ideal of equal justice under law:²⁷

Equal justice for every man is one of the great ideals of our society. This is the end for which our entire legal system exists. It is central to that system that justice should not be withheld or denied because of an individual's race, his religion, his beliefs, or his station in society. We also accept as fundamental that the law should be the same for the rich and for the poor.

²⁰ "Respect for Law and Due Process—The Foundation of a Free Society," 18 *U. Fla. L. Rev.* 1, 2-5 (1965).

²¹ "A Lawyer Looks at Civil Disobedience," 23 *Wash. & Lee L. Rev.* 205, 228 (1966).

²² "Civil Disobedience: Prelude to Revolution?" 40 *N.Y. St. B. J.* 172, 181 (1968).

²³ See, e.g., Black's opinions in *Bell v. Maryland*, 378 U.S. 226, 318 (1964) (dissent); *Cox v. Louisiana*, 379 U.S. 536, 575 (1965) (dissent); *Brown v. Louisiana*, 383 U.S. 131, 151 (1966) (dissent); *Addelley v. Florida*, 385 U.S. 39 (1966). For an analysis of Black's views in these cases, see A. E. Dick Howard, "Mr. Justice Black: The Negro Protest Movement and the Rule of Law," 53 *Va. L. Rev.* 1030 (1967).

²⁴ See "The President's Annual Address. The State of the Legal Profession," 51 *A.B.A.J.* 821, 827-28 (1965); "Respect for Law and Due Process—The Foundation of a Free Society," 18 *U. Fla. L. Rev.* 1, 7 n. 18 (1965); "A Lawyer Looks at Civil Disobedience," 23 *Wash. & Lee L. Rev.* 205, 226-27, 231 (1966); "Civil Disobedience: Prelude to Revolution?" 40 *N.Y. St. B. J.* 172, 173 (1968).

²⁵ "Respect for Law and Due Process—The Foundation of a Free Society," 18 *U. Fla. L. Rev.* 1, 7 (1965).

²⁶ "The Challenge to the Profession," 51 *A.B.A.J.* 148, 149 (1965).

²⁷ "The Response of the Bar," 51 *A.B.A.J.* 751 (1965).

But we have long known that the attainment of this ideal is not easy. It requires sensitivity, vigilance, and a willingness to experiment. Looking at contemporary America realistically, we must admit that despite all of our efforts—and these have not been insignificant—far too many persons are not able to obtain equal justice under law.

As president of the American Bar Association in 1964-65, Powell spurred steps to make legal services more generally available. On assuming the presidency in August 1964, Powell proposed three items of priority for his term of president, one of the three being an acceleration and broadening of efforts to assure the availability of legal services, in both civil and criminal cases, to all who need them.²⁸ In the president's annual address in August 1965, Powell was able to report on the steps which had been taken during the preceding year toward that goal.²⁹

Powell's August 1965 address is interesting not only for the narrative of events but also for Powell's attitude to them. Speaking of the entry of OEO into the area of legal services for the poor, Powell candidly admitted his own preference for "local" rather than "federal" solutions to the problem. But he chose to lay aside his personal preferences in the face of the demonstrable need for federal involvement without which a sufficient program of legal aid was unlikely.³⁰

It is true that most lawyers would have preferred local rather than federal solutions. Certainly, this would have been my own choice. But the complexities and demands of modern society, with burdens beyond the will or capacity of states and localities to meet, have resulted in federal assistance in almost every area of social and economic life. There is no reason to think that legal services. Might be excluded from this fundamental trend of the mid-twentieth century Lawyers must be realistic as well as compassionate.

Turning his attention to the problems encountered by middle-income groups in obtaining legal services, Powell implied some reservations about the rise of new trends, such as the increasing reliance on group legal services—trends which might clash with "long-established standards of the legal profession."³¹ But again he seemed to want to avoid a doctrinaire position; even as study of the problem of legal services was proceeding, he asked the bar to

press ahead with every available means to improve existing methods—through greater emphasis on lawyer referral services and through wider experimentation with neighborhood law offices and legal clinics.³²

Availability of legal services can also be a special problem in the case of unpopular causes or individuals. In his president's annual report to the ABA, Powell urged revision of the Canons of Legal Ethics so that the Canons might "with sufficient clarity and particularity express this duty of individual lawyers" [to represent unpopular defendants] as well as "the broader obligations of the Bar generally to discourage public condemnation of the lawyer who represents an unpopular defendant."³³

RACE AND CIVIL RIGHTS

The sense of proportion and balance which is reflected in Powell's writings and speeches is equally present when he touches on questions of race. As already noted, in his condemnation of civil disobedience as it emerged in the civil rights movement, Powell has carefully and consistently laid a full measure of blame at the doorstep of Southerners who undertook massive resistance to court-ordered integration.³⁴ And, in speaking of civil disobedience, Powell has been sensitive to the fact that Negroes often had ample reason to distrust the processes of the law.³⁵

It is true that the Negro has had, until recent years, little reason to respect the law. The entire legal process, from the police and sheriff to the citizens who serve on juries, has too often applied a double standard of justice.

²⁸ See "The President's Page," 50 *A.B.A.J.* 891 (1964).

²⁹ "The President's Annual Address: The State of the Legal Profession," 51 *A.B.A.J.* 821 (1965).

³⁰ *Id.*, p. 823.

³¹ *Id.*, p. 824. On questions raised by Powell concerning the implications of Brotherhood of Railway Trainmen v. Virginia, 377 U.S. 1 (1964), see *id.*, p. 825; "The President's Page," 51 *A.B.A.J.* 3 (1965); "Extending Legal Services to Indigents and Low Income Groups," 13 *La. St. B.J.* 11-17 (1965).

³² "The President's Annual Address: The State of the Legal Profession," 51 *A.B.A.J.* 821, 824 (1965). See also Powell's conclusion that the bar must "explore broadly, and with an open mind" a range of possible solutions. "The President's Page," 51 *A.B.A.J.* 3, 20 (1965).

³³ *Id.*, p. 825.

³⁴ "Respect for Law and Due Process—The Foundation of a Free Society," 18 *U. Fla. L. Rev.* 1, 4 (1965); "A Lawyer Looks at Civil Disobedience," 23 *Wash. & Lee L. Rev.* 205, 210 (1966).

³⁵ *Id.*, p. 206.

Even some of the courts at lower levels have failed to administer equal justice. Although by no means confined to the southern states, these conditions—because of the history, economic and social structure of that region, and its population mix—have been a way of life in some parts of the South. Many lawyers, conforming to the mores of their communities, have generally tolerated all of this, often with little consciousness of their duty as officers of the courts. And when lawyers have been needed to represent defendants in civil rights cases, far too few have responded.

There were also the discriminatory state and local laws, the denial of voting rights, and the absence of economic and educational opportunity for the Negro. Finally, there was the small and depraved minority which resorted to physical violence and intimidation.

These conditions, which have sullied our proud boast of equal justice under law, set the stage for the civil rights movement.

Accordingly, Powell has urged that the "full processes of our legal system must be used as effectively, and with as much determination" against those who would use "violence and intimidation to frustrate the legal rights of Negro citizens" as against any other form of lawlessness.³⁶ And Powell has lamented the "particularly acute" problem of racial prejudice frustrating fair trial and has urged steps to assure fair selection of jurors and impartial administration of justice.³⁷

Powell has reason to know something of the South's passage through the troubled years following *Brown v. Board of Education*. He was chairman of the Richmond School Board from 1952 to 1961, during which time Richmond was able to take the initial steps toward desegregation of its schools without the closing of schools and like traumas through which some other Virginia localities went in the late 50's and early 60's. On the occasion of Powell's nomination to the Supreme Court, the national press, inquiring locally into Powell's role in the desegregation events in Richmond during his chairmanship of the school board, has reported its conclusion that his role was a moderating and constructive one which made possible eventual desegregation without closed schools or other crippling effect on the quality of public education.³⁸

SPEECH AND PRESS

Powell has not taken many occasions to express himself directly on rights of freedom of expression. But in several contexts his views reflect a tendency, in suggesting solutions to whatever problems may be at hand, to be sensitive to the implications for First Amendment freedoms.

For example, in approaching the question of fair trial and free press, Powell is unwilling to see the matter as a "contest between two competing rights." Rather he sees the task as one of seeking an accommodation of both rights "in the limited area where unrestrained publicity can endanger fair trial."³⁹

In response to the problem of release of information which tends to prejudice the accused, Powell has rejected the British approach of emphasizing control of the media itself, e.g. by subjecting the publisher to fine or imprisonment for contempt of court. Powell obviously shares the "uneasy distrust" which Americans seem to have shown for the contempt power.⁴⁰

Moreover, he is not willing to use an approach inconsistent with the "privileged position" which this country affords freedom of speech and press. He prefers instead to emphasize the duty of the bar to police itself and to reach at the source (whether prosecution or defense) information which might prejudice a trial.⁴¹ Even here, his solution is not to bar information permanently, rather to delay it until the jury can reach a verdict, untainted by prejudicial publicity.⁴² Powell's search for a reasoned solution to the question of fair trial and free press is summed up in his statement:⁴³

It is important that the media and the Bar should not view this as a "controversy" or as an attack by one upon the other. We have here a common problem requiring thoughtful and reasoned solutions in the public interest.

³⁶ "The President's Annual Address: The State of the Legal Profession," 51 *A.B.A.J.* 821, 827 (1965).

³⁷ "Jury Trial of Crimes," 23 *Wash. & Lee L. Rev.* 1, 11 (1966).

³⁸ See, e.g., Washington Post, Oct. 24, 1971, p. A1, col. 1; New York Times, Oct. 22, 1971, p. 25, col. 5; New York Times, Oct. 16, 1971, p. 1, col. 6; Time Magazine, Nov. 1, 1971, p. 18; Newsweek, Nov. 1, 1971, p. 18.

³⁹ "The Right to a Fair Trial," 51 *A.B.A.J.* 534, 535 (1965).

⁴⁰ *Id.*, p. 536. For an instance of Powell's concern about the contempt power, see "Jury Trial of Crimes," 23 *Wash. & Lee L. Rev.* 1, 10 (1966).

⁴¹ "The Right to a Fair Trial," 51 *A.B.A.J.* 534, 536 (1965). See also "The President's Annual Address: The State of the Legal Profession," 51 *A.B.A.J.* 821, 825 (1965).

⁴² "The Right to a Fair Trial," 51 *A.B.A.J.* 534, 536 (1965).

⁴³ "The President's Page," 51 *A.B.A.J.* 199 (1965).

Powell's views on civil disobedience have already been noted. The intensity with which he holds those views about confining dissent to legitimate channels raises questions about the implications of Powell's arguments for First Amendment rights. Powell has recognized that problem and has said that his proposals should not be applied in such a way as to infringe on those First Amendment freedoms, although he does not conceive incitement to willful violation of draft laws, income tax laws, or court decrees to be encompassed as rights of free speech.⁴⁴

WIRETAPPING

Powell's views on wiretapping have occasioned some notice. In an article written for the *Richmond Times-Dispatch* and reprinted in the *FBI Law Enforcement Bulletin*, he advanced reasons why requiring a court order for wiretapping in cases involving national security "would seriously handicap our counter-espionage and countersubversive operations." Powell recognized that there could be "legitimate concern" whether a President should have the power of wiretapping in internal security cases without court order and that "at least in theory" there was a potential for abuse. But, apparently resting content with the government's claim of its need for secrecy, Powell dismissed the outcry over wiretapping as a "tempest in a teapot." Citing figures showing that there are only a few hundred wiretaps annually, Powell concluded, "Law-abiding citizens have nothing to fear."⁴⁵

The FBI article, a journalistic piece, was apparently solicited as a rebuttal to an article expressing the opposite point of view.⁴⁶ Powell's article has the ring of a rebuttal about it. It is in the nature of a rebuttal to assume that one side of an argument has been stated and accordingly to argue the other side. Powell's views on wiretapping are more fully and fairly stated in a speech he gave to the Richmond Bar Association on April 15, 1971.⁴⁷ There (as he did also in the FBI article) Powell noted that the more serious wiretapping question arises in internal security cases, as Title III of the Omnibus Crime Control Act of 1968⁴⁸ requires a court order when electronic surveillance is sought to be used in cases not involving national defense or internal security. Believing that it is difficult to draw a distinction between external and internal threats to the country's security, Powell noted that the question whether the President has inherent power to order a wiretap in internal security cases is pending in the courts. He therefore looked to the courts to lay down guidelines in this "perplexing" area.

Taking the totality of Powell's views on wiretapping, it is clear that he recognizes and approves the place of prior court order, with carefully fashioned limitations and safeguards, when wiretaps are used against domestic crime. His position on wiretapping in internal security cases is less clear. His FBI article would suggest he has resolved that question in favor of the President's inherent power in such cases, but his Richmond bar speech would imply a more guarded and tentative position. The bar speech, the tone of which is far more characteristic of his other speeches and writings and which was made to a legal audience, would seem to be the more accurate indicator of Powell's approach to the constitutional aspects of wiretapping. It would suggest that as a Justice he would approach the question of wiretapping with an awareness of the various, arguably competing factors which bear on a judicial resolution of the question.⁴⁹

SUPREME COURT

Like most lawyers, Powell has felt perfectly entitled to criticize decisions of the Supreme Court, for example, the *Escobedo* and *Miranda* decisions. But he has a lawyer's reverence for the Court as an institution. Repeatedly he has called upon lawyers to avoid destructive criticism of the Court and has rebuked them for their failure to defend the Court against such criticism.⁵⁰

⁴⁴ "Civil Disobedience: Preclude to Revolution?" 40 *N.Y.S.B.J.* 172, 180 (1965).

⁴⁵ "Civil Liberties Repression: Fact or Fiction?" *FBI Law Enforcement Bulletin*, Oct. 1971, pp. 9, 10-11.

⁴⁶ Bernard Gawzer, "Is Individual Freedom Threatened by Growth of Government Probes?" *Richmond Times-Dispatch*, June 6, 1971, p. F1, col. 1.

⁴⁷ Manuscript of text of speech.

⁴⁸ P. L. 90-351, 90th Cong., H. R. 5037, June 1968.

⁴⁹ The question of the President's power to authorize wiretaps without judicial supervision in cases involving internal security is now pending before the Supreme Court. See *United States v. U.S.D. C. for E.D. Mich.*, 444 F. 2d 651 (6th Cir.), cert. granted, 403 U.S. 930 (1971).

⁵⁰ E. G., "Respect for Law and Due Process—The Foundation of a Free Society," 18 *U. Fla. L. Rev.* 1, 4 (1965); "An Urgent Need: More Effective Criminal Justice," 51 *A.B.A.J.* 437, 439 (1966); President's Comm'n on Law Enforcement and Admin. of Justice, *A Report: The Challenge of Crime in a Free Society* (1967), pp. 303, 304 (Additional views of Messrs. Jaworski, Malone, Powell, and Storey).

He shows a like sensitivity to ensuring that the Court's independence not be undermined because of criticism of unpopular decisions. In this vein, Powell expressed pointed disapproval of Congress' exclusion of the Justices of the Supreme Court from the general pay raise for other federal judges in 1965—an "unfortunate example" of the pressures which even in an enlightened system can be brought to bear on the judiciary.⁵¹

Powell's belief in an independent and unfettered judiciary is also reflected by criticism of the 1963 proposal to create a "Court of the Union" to review certain kinds of Supreme Court decisions—a proposal which Powell compared to the court-packing proposal of the 1930's. "These," said Powell, "were attacks on the fundamental principles of our government involving the independence of the judiciary and the separation of powers doctrine."⁵²

Summary. To repeat, the burden of the above discussion has not been to give a comprehensive issue-by-issue discussion of Lewis Powell's philosophy or to dissect the position which he has taken on every issue. Rather the purpose has been to take central themes which he has developed in his articles and speeches and to enquire what qualities of mind and temper they reflect. In my judgment, Lewis Powell's writings reflect the qualities which I have seen the man display at firsthand—a devotion to the uses of reason, a finely developed set of principles and values, a skilled craftsman's ability to analyze and articulate, an enduring dedication to the law and the judicial process, and a well-modulated and judicious temperament. Few men are so well qualified by temperament and training to sit on the bench as is Lewis Powell.

STATEMENT OF J. EDWARD LUMBARD, SENIOR JUDGE OF THE SECOND CIRCUIT

My name is J. Edward Lumbard. I am a senior circuit judge of the United States Court of Appeals for the Second Circuit. From December 9, 1959 to May 17, 1971, I was Chief Judge of this Court. I have been a circuit judge since July 18, 1955.

I have known Lewis Powell since December 1963 when the American Bar Association embarked on its project to formulate standards for the administration of criminal justice. I have been closely associated with Lewis Powell in that project during the past eight years. I believe he possesses in high degree all the qualities one would hope to find in a Justice of the Supreme Court. He has integrity, scholarship, an informed and independent mind, a keen sense of civic and professional responsibility, clarity of expression, a tolerance and understanding of the views of others and, above all, such wisdom and judgment as can come only from having played a leading role in the legal profession and in the public affairs of this country.

As President-Elect of the American Bar Association in 1963-1964, Lewis Powell was an active member of the committee which made preliminary studies to determine the range of the criminal justice project. In August 1964 the Board of Governors approved the project and at the same time Lewis Powell became President of the ABA.

I need hardly remind this Committee of the great public concern regarding criminal justice in 1963. By that time numerous court decisions, judicial standards and reports in the news media had made it all too clear that the administration of criminal justice throughout the country was becoming ineffective; it was also apparent that too little was being done to protect individual rights according to constitutional requirements of due process.

The purpose of the ABA project was to formulate and recommend standards which the states and the federal government could apply. In his speeches and writing Lewis Powell repeatedly emphasized the dual purpose of the project: to permit effective law enforcement and adequate protection of the public and simultaneously to safeguard and amplify the constitutional rights of those suspected of crime. Speaking to the New York Bar Association in January 1965, he noted: "the problem—complicated by our dual system of state and federal laws—is how to strengthen our criminal laws and render their enforcement more effective and at the same time accord to persons accused of crime the rights which are a proud part of our Western heritage."

An ABA President, Lewis Powell immediately went to work to recruit the necessary men and money for the criminal justice project. To finance three years

⁵¹ "Jury Trial of Crimes," 23 *Wash. & Lee L. Rev.* 1, 9-10 (1966).

⁵² "The President's Page," 51 *A.B.A.J.* 101 (1965).

of effort, he was instrumental in securing grants in equal amounts of \$250,000 from the American Bar Foundation, the Avalon Foundation (now part of the Andrew W. Mellon Foundation) and the Vincent Astor Foundation.

Lewis Powell appointed me Chairman of the Special Committee which was to oversee the six advisory committees charged with formulating the standards. For the advisory chairmen he selected men of the highest calibre only. Paul C. Reardon, justice of the Supreme Judicial Court of Massachusetts; Federal District Judge Richard Austin of Chicago; Alfred P. Murrah of Oklahoma, then Chief Judge of the Tenth Circuit; Walter V. Schaefer of the Illinois Supreme Court; Warren Burger, then United States Circuit Judge in the District of Columbia, and Gerald Flood of the Pennsylvania Superior Court. (Upon Judge Flood's death in 1965 Simon Sobeloff, then Chief Judge of the Fourth Circuit, took his place.)

The Committee on Fair Trial and Free Press, chaired by Justice Reardon, was appointed first because of the urgency of the problems in that field. I mention the names of the men selected for that committee because they show the importance Lewis Powell attached to the project and his ability to summon men representative of all views to resolve difficult problems. Along with Justice Reardon, the following served: Grant B. Cooper, eminent California trial counsel; Chief Judge Edward J. Devitt, of the United States District Court for Minnesota; Dean Robert M. Figg, Jr., of the University of South Carolina Law School; Abe Fortas, then in private practice in Washington, D.C. (who served until he became a Justice of the Supreme Court); Ross L. Malone, former Deputy Attorney General and ABA President, 1958-1959; Judge Bernard S. Meyer, of the New York Supreme Court; Wade H. McCree, Jr., then United States District Judge, Eastern District of Michigan, now Circuit Judge for the Sixth Circuit; Robert G. Storey, former ABA President, former law school dean at South Methodist University; Lawrence E. Walsh, former Deputy Attorney General, and former District Judge in Southern New York; and Daniel P. Ward, then State's Attorney for Cook County, now Justice of the Illinois Supreme Court.

Lewis Powell's paramount considerations were that each Committee should enlist the most knowledgeable members of the various disciplines of the profession and that it should be representative of all sections and all points of view. Thus the 78 members of the project included 15 federal judges, 15 state judges (including three state chief justices), 6 state prosecutors, 2 public defenders, 29 practicing lawyers, 8 criminal law professors and 3 law enforcement officials. In addition, he called upon law schools from every section of the country to furnish reporters and advisors.

When Lewis Powell finished his term as ABA President in August 1965, he was appointed to and served with me on the Special Committee, and has remained a member ever since.

When the ABA project began in 1964, Lewis Powell freely conceded that he knew little about criminal procedure and had had virtually no experience in the field. But as standards were drafted and proposals were made, he studied them carefully, participated in the debates and expressed an informed view on the issues to be resolved. In the course of the Special Committee's review of the proposed standards, Lewis Powell became the Committee's most knowledgeable member. He played a leading role in supporting the Committee's recommendations during debates in the House of Delegates, after which the standards were approved.

In July 1965, President Johnson appointed Lewis Powell to the President's Commission on Law Enforcement and Administration of Justice. Of the 19 members of the President's Commission, seven were already participants in the criminal justice project. One happy consequence was that the Commission and the project frequently exchanged views to avoid duplication of effort. Lewis Powell was one of the most influential and active members of the President's Commission. When the final report was issued in February 1967, Lewis Powell joined with six other members of the Commission in filing a Supplemental Statement of Constitutional Limitations. In this statement the seven members of the Commission expressed their grave concern about the imbalance between law enforcement and protection of the public and the measures which were being mandated by the courts to protect individual rights. While the statement made concrete proposals for constitutional change to strengthen law enforcement, it also pointed out the necessity to retain "appropriate and effective safeguards against oppressive government action against the individual, whether guilty or innocent of crime." Lewis Powell was the principal draftsman of this Supplemental Statement.

In October 1966 the first standards, on fair trial and free press, were issued. Since then there has been a steady succession of reports on all the important areas of criminal justice. Separately bound, these standards are to be found in the libraries of most of the judges of this country; they are cited frequently in judicial opinions of trial and appellate courts, including the Supreme Court of the United States.

Two examples will suffice to show the far-reaching impact of the project's work. The standards on Pleas of Guilty, recommending in detail the procedure which a court should follow in receiving and acting upon guilty pleas, went further than the Rules of Federal Criminal Procedure. Recently, the Advisory Committee on Federal Rules of Criminal Procedure recommended additional provisions regarding pleas of guilty which closely follow the ABA criminal justice proposals. These proposals will next be acted upon by the Judicial Conference of the United States and the Supreme Court before being presented to Congress.

Second, when the judges of the Second Circuit, troubled with the problem of prompt disposition of criminal cases, announced new rules to become effective on July 5, 1971, they based their action on the ABA standards calling for definite time limits within which criminal cases must be disposed. Similarly, just a few days ago, on Friday, October 29, 1971, the Judicial Conference of the United States approved a new federal rule requiring each district court in the country to make rules for the prompt disposition of criminal cases, with the approval of the appropriate circuit council.

I think it fair to say that with respect to pleas of guilty and the prompt disposition of criminal cases, the ABA standards have greatly expedited action by state and federal authorities.

Of course, it took many of us working over a period of years to produce the ABA standards, and the work still goes forward. But this work would have fallen far short of the impact it has achieved and the acceptance it has won from the public, as well as the bar and the bench of this country, had it not been for the leadership, the wisdom, and the legal ability of Lewis Powell.

In conclusion, Mr. Chairman, it is my opinion that Lewis Powell is highly qualified in every respect to serve as the Justice of the Supreme Court of the United States.

STATEMENT OF JOSEPH D. TYDINGS

It is a pleasure to appear before my former colleagues on the Judiciary Committee in the happy posture of supporting the nomination of Lewis Powell of Virginia to be Justice of the Supreme Court of the United States.

Lewis Powell not only is a distinguished lawyer, he is a truly fine human being. My contacts with him during the years I was chairman of the Subcommittee on Improvements in Judicial Machinery were many. Without exception, we were involved in the same efforts to improve the judicial system of our country and to insure that all Americans had equal justice. It's very doubtful that the Legal Services for the Poor Program of OEO could have been instituted without the support and leadership of Lewis Powell who, at the time the Congress considered the initial authorization and funding, was president of the American Bar Association. Lewis Powell not only supported the neighborhood legal services concept, he pioneered it.

The work of my Subcommittee in drafting the Title of the Civil Rights Act of 1966, which related to Federal Jury Selection, was greatly bulwarked by Lewis Powell's support.

Whenever a particularly difficult problem of legislation concerning Federal Judicial Reform was before our committee, Lewis Powell was always available to counsel and assist.

Last year when the Senate refused to advise and consent to the nomination of J. Harrold Carswell to be Justice of the Supreme Court, President Nixon took occasion to criticize the United States Senate for failure to follow his mandate and, in fact, accused the Senate of blocking the nomination because Mr. Carswell was "a Southerner and a conservative." In response to that intemperate outburst, I delivered a speech on the floor of the United States Senate in which I enumerated the names of a number of distinguished Southern conservative judges and lawyers who would be enthusiastically received as nominee for our country's highest court by me and I felt many of my colleagues in the Senate on the basis of their legal background and qualifications. Some of you may recall that I headed that list with the name of Lewis Powell of Virginia. I felt that

way in 1970. I feel that way today. I urge you to report his nomination favorably to the Senate and urge the Senate to advise and consent to Lewis Powell to be Justice of the Supreme Court of the United States.

STATEMENT OF ARMISTEAD L. BOOTHE: SOME OF LEWIS POWELL'S CONTRIBUTIONS TO EDUCATION AND CIVIL RIGHTS IN VIRGINIA

As Virginia entered the 1950's, some of her lawyers and legislators were convinced that the Commonwealth and the South had not been adequately informed or prepared for the social changes that faced them. Students of the U.S. Supreme Court decisions after 1935 were aware of the possible imminence of a social revolution. Lewis Powell was one of the moderate, cool, farsighted students of the law who shared this realization.

From the date of the *Brown* decision in 1954, he was a stalwart member of an elite group of Virginians who saw that the Commonwealth's schools must not be closed. From July 1954 onward, the issue in the State was just as sharp as a new knife blade between an assignment (or freedom of choice) plan, to keep the schools open, or massive resistance, to cripple them. During the next five crucial years Lewis Powell, then Chairman of the Richmond School Board, placed himself effectively with the minority who felt obligated to uphold the law and the Virginia public school system.

He was one of two Virginia citizens more responsible than others for impressing businessmen and influential persons of all classes that irreparable damage would be done to human beings and to economic resources of Virginia resulting from the collapse of education. By March of 1959, 14,000 Virginia children were out of school. Thanks to the sterling work, often behind the scenes, done by executives in Norfolk, Virginia, and by Lewis Powell and Harvie Wilkinson in Richmond, Governor Almond was convinced that the state's educational salvation lay in superseding the massive resistance laws with a workable assignment plan. This plan in April of 1959, passed the House of Delegates by a slim margin and was enacted by the Senate by a single vote. Powell should be given full credit for convincing a good many of the necessary conservatives that they should be members of the group which finally turned out to have a one-man majority.

Perhaps today there are some younger people who do not remember the 1950's or the humanity, the regard for law, and the farsightedness of a few people like Lewis Powell, who helped Virginia, in a Virginia way, to survive the Commonwealth's severest test in this century. Many accolades could be given to Powell's judgment, fairness, intelligence, and other judicial attributes. Men and women who can vouch for his virtues are legion. This statement is simply intended to be a brief word picture of a courageous American legal soldier under fire.

I note from the news that the congressional black caucus is opposing Powell. If the distinguished members of that group could remember the 1950's and could get all the available facts, they would not oppose him. They would approve of his selection and thank the good Lord they would have him on the Supreme Court.

STATEMENT OF ORISON S. MARDEN ¹

I reside in Scarsdale, New York and have practiced law in New York City since 1930.

I have known Lewis F. Powell, Jr. for upwards of twenty years. As fellow members of the House of Delegates of the American Bar Association and, for a time, as fellow officers of that Association and of the National Legal Aid and Defender Association, I have had ample opportunity to observe and to appreciate the qualities of this truly great lawyer and citizen. I sincerely believe that all who have had an opportunity to observe his qualities share my opinion that he is superbly equipped for service on the highest court of our land. A new acquaintance will find that it takes very little time to discover the strength of his integrity, the keenness of his mind, his well balanced judgment and, most refreshing, his friendliness and lack of pomposity.

Another quality which I have observed in Mr. Powell—a rare quality, unfortunately—is his ability to reconcile differing views. I have seen this happen frequently at meetings of the Board of Governors and the House of Delegates of

¹ Former President of the American Bar Association, the New York State Bar Association, The Association of the Bar of the City of New York, and The National Legal Aid and Defender Association.

the American Bar Association. Lawyers have a tendency to be independent thinkers and to express their views vigorously. Time and time again I have seen Mr. Powell reconcile differing views to the satisfaction of all concerned.

As others will no doubt speak of the qualities I have mentioned, I will limit this statement to two episodes within my personal knowledge which, I think, demonstrate Lewis Powell's deep concern for the true administration of justice and in assuring equal access to justice for all our citizens, rich and poor alike, and of whatever color, creed and religion.

I will refer first to Mr. Powell's part in establishing the Legal Services Program of the Office of Economic Opportunity. This occurred in February 1965 during his presidency of the American Bar Association. The Office of Economic Opportunity, then under the command of R. Sargent Shriver, proposed the funding of legal assistance offices wherever such offices would be welcomed by local community groups and there was a demonstrated need for legal assistance for those who could not pay for legal advice and assistance. Many lawyers were skeptical of the program, fearing it as an attempted socialization of the profession or an intrusion by the Federal Government in local affairs.

Mr. Powell, however, saw the program as a practical means of implementing a basic ideal of the profession, providing legal assistance to all in need of legal help. He, therefore, took the leadership in proposing to the House of Delegates of the American Bar Association that the profession give wholehearted support to the program, assist in its development and give the direction and leadership needed to assure that the services would be provided in a professional manner. This was statesmanship of high order at a time when it would have been easier to have temporized or opposed the program.

Mr. Shriver has publicly acknowledged that Mr. Powell's leadership assured the wide acceptance needed to properly launch the program. Despite growing pains and local problems, it is now generally accepted that the Legal Services Program is perhaps the most successful of the various programs initiated by the Office of Economic Opportunity. Much of the credit for this success rightfully belongs to Mr. Powell.

The second instance to which I will refer is Mr. Powell's part in setting up the Section of Individual Rights and Responsibilities of the American Bar Association. This also had its origin during his time as President and Immediate Past President of the Association. In February 1965 a proposal had been submitted by Dean Jefferson Fordham of the Law School of the University of Pennsylvania for the establishment of a Section of Individual Rights. The proposal was considered by a subcommittee of the Board of Governors and by the Board itself at various meetings. It was determined, largely at the suggestion of Mr. Powell, that the objectives of the proposed Section should be balanced and broadened to include the responsibilities of citizens as well as their civil rights. Accordingly, as the Section was finally organized and approved by the House of Delegates of the Association in August 1966, the Association's Standing Committees on American Citizenship and the Bill of Rights, as well as its Special Committee on Civil Rights and Racial Unrest, were all merged into a new section known as the Section on Individual Rights and Responsibilities.

The principal purposes of the new Section, as set out in its By-Laws are:

"(a) To provide an opportunity within the Association for members of the profession to consider issues with respect to recognition and enjoyment of individual rights and responsibilities under the American constitutional system;

"(b) To encourage public understanding of the rights and duties of American citizenship and of the correlative nature of both rights and duties;

"(c) To further public and lawyer understanding of rights and duties under the Constitution and the Bill of Rights with respect to freedom of speech, freedom of religion, freedom of assembly, freedom of movement, enjoyment of property, fair trial, and equality before the law;

"(d) To encourage public respect for law and due process and an appreciation that the vindication of rights must be accomplished by lawful and orderly means;

"(e) To nurture a sense of responsibility on the part of lawyers, individually and as a profession, in the recognition and enforcement of individual rights and duties and in the discharge of their responsibilities with respect to assuring fair trial and equality of justice for all persons;

"(f) To study and recommend methods of maintaining a proper balance between the rights of those accused of crime and the rights of the general public to be protected in life, person, and property;

"(g) To study the need and recommend appropriate action for the protection of individual rights against the arbitrary exercise of power at any level of government."

The first Chairman of the new Section, Dean Jefferson Fordham, acknowledged the leadership given by Lewis Powell in his first letter to the membership. He wrote, in part:

"There is no question but that the leadership of Past Presidents Lewis Powell and Edward Kuhn * * * were highly significant in giving strong support for the Section. I acknowledge this with warm appreciation."

At the meeting of the House of Delegates in August 1966, a time when I happened to be President of the Association, I publicly acknowledged his leadership in these words:

"I think the man you should hear from at this time is the real architect of the Section as it has finally emerged from the Board of Governors and that is our Past President, Mr. Powell."

I submit that the two examples which I have briefly described give ample evidence of Mr. Powell's deep concern for justice and that it be made equally available to all; and, further, that he is concerned with the responsibilities of citizenship as well as with the civil rights of individuals. His well balanced belief in our constitutional system and in equal justice under law, coupled with exceptional integrity and high competence as a lawyer, give ample assurance that Mr. Powell meets the highest standards for appointment to the Court.

STATEMENT OF BERNARD G. SEGAL

My name is Bernard G. Segal. I am a practicing lawyer in Philadelphia, Pennsylvania, and a member of the Bar of the Supreme Court of the United States. Of relevance in view of the purpose of my testimony may be the fact that I have served as President of the American College to Trial Lawyers; Chairman of the Board of the American Judicature Society; currently Vice President, having been for thirteen years Treasurer, of The American Law Institute; and President of the American Bar Association, having been for six years Chairman of its Standing Committee on Federal Judiciary and six as Chairman of its Standing Committee on Judicial Selection, Tenure and Compensation. I serve as a charter member of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

Commencing with my testimony as Chairman of the Commission on Judicial and Congressional Salaries created by the 83rd Congress, I have been privileged to appear before this distinguished Committee a great many times over the past two decades. I have never appeared with greater enthusiasm or deeper dedication than today. For I believe that the duty of this august group in passing upon the fitness of a Presidential nominee to serve as a Justice on the Supreme Court transcends in its momentousness and concern to the Nation any other obligation which devolves upon the Committee. It is therefore with profound satisfaction that I speak in support of a nominee who in my judgment is as eminently qualified to serve on our highest judicial tribunal as anyone who has come before the Committee since I have been concerned with such matters, and I daresay for many years before that as well. In legal education, legal experience and legal competence, he ranks among the elite of the nation's bar.

When I appeared before this Committee on another occasion, I pointed out that there exists a multitude of views on the essential qualities which a nominee to the highest Court of the land should have. An even more divergent pattern of views concerns the nature of the professional experience, the background that best equips a lawyer for service on the Supreme Court. There is no universally accepted formula on these subjects, and to my mind, there can be none. Indeed, any effort to devise a fixed set of prerequisites for this high office, or to establish any particular background of experience should be possessed by all nominees, would in my opinion be inherently unwise. As Mr. Justice Frankfurter, perhaps the outstanding student of the Court in this century, has concluded after a searching study into the backgrounds and the qualities of the Justices who have served on the Supreme Court, lawyers of the stature justifying appointment to the Supreme Court have been found in a variety of professional careers. Once certain basic prerequisites are met, it is not the particular career which a lawyer has had, he points out, but rather his capacious mind and reliable powers for disinterested and fair-minded judgment, his functional fitness, his disposition to be detached and withdrawn, his inner strength to curb any tendency to reach results agreeable to desire or to embrace the solution of a problem before exhausting its comprehensive analysis. My own view has always been that one of the great

strengths of our Supreme Court has derived from the rich cross-section, the diversity, of the backgrounds from which its members have been drawn—judges of lower courts, Federal and State; members of the Congress; on occasion a towering figure in the law drawn directly from the law school.

Lewis F. Powell, Jr. comes to the Court directly from an active and vigorous law practice and a very large participation in the extracurricular activities of the profession. I have known him professionally and personally, for many years. In my opinion he is admirably qualified to assume the office of Justice of the Supreme Court and to fulfill with singular distinction the obligations of that crucial position.

Mr. POWELL's superb intellectual capacity is well known to judges and lawyers throughout the land; and it has been abundantly demonstrated by scholarly achievements both in his academic life and in the legal profession. In college he was elected to Phi Beta Kappa and at law school he won honors as a student and was graduated at the top of his class, after which he earned the LL.M. degree at the Harvard Law School.

Lewis Powell is a man skilled and respected in the law. His practice as a lawyer has been as extensive and diversified as it has been distinguished. As a senior member of a Richmond firm, he has represented corporate clients, civic and charitable interests, and impoverished individuals with equal ability and devotion. He enjoys an extremely high reputation as a courtroom advocate at both trials and appellate levels. I have referred to him clients requiring professional service in Virginia and on such occasions to work with him and observe at first hand his all around excellence as a practicing lawyer.

Next, I list Mr. Powell's awareness of his public obligations as a citizen. Here, too, he has been preeminent. To call the roll of the voluntary public services he has worked on, headed and developed, would be to name hospitals and churches, schools and universities, charitable and civic projects of all kinds. These appear in the biographical material before the Committee and I shall therefore not impose upon the Committee's time by repeating them. I merely observe that the public causes which he has headed or worked in have benefitted richly from his participation. It is a deep sense of community that makes a man devote so much of himself so selflessly to so many good causes.

And again without detailing his outstanding service to his country in World War II, I merely point out in passing that his thirty-three months of intensive activity in the USAAF overseas brought him the Legion of Merit, the Bronze Star (United States), the Croix de Guerre with Palms (France), and promotion to the rank of colonel.

In his profession he has been rewarded with the highest offices in the power of his fellow lawyers to bestow—the Presidency of the American College of Trial Lawyers, the highly prestigious honorary organization of courtroom advocates; the Presidency of the American Bar Foundation, the very active and useful research arm of the American Bar Association; and of course, the Presidency of the American Bar Association, now comprised of more than 150,000 dues paying members and having in its House of Delegates, of which Mr. Powell is a Life Member, representatives of organizations comprised of more than 90% of the lawyers in America. These honors came to him after he first received recognition in his own community by election as President of the Richard Bar Association. Of the numerous other high offices he has held in leading organizations of the profession, I mention only his Vice Presidency of the National Legal Aid and Defender Association and his directorship in the American Judicature Society.

In stating that Mr. Powell is conceded by everyone knowledgeable in ABA affairs and history as having been one of the most effective, most dedicated, and most beloved Presidents the American Bar Association has ever had, I do not lose sight of the fact that past Presidents of the American Bar Association include such men as William Howard Taft, Elihu Root, John W. Davis and Charles Evans Hughes. Rather than rank him with them, I think I can say with authority, having so recently spent two intensive years in the American Bar Center and traveling around the country that there is no one who is held in greater admiration or more genuine respect than he by the present and former officers and staff of the American Bar Association.

During the two years that he was ABA President-Elect and President, he placed the Association in a new position of leadership in terms of pragmatic institutional recognition of the vast social and technological changes that characterize our times, and in the adoption among others of highly significant programs and policies designed to improve the administration of criminal justice, to fulfill

the obligations of lawyers to provide legal services to the needy members of our society, to reevaluate and reevaluate the ethical standards of the profession, and to enhance the general reputation of lawyers.

The Criminal Justice Act of 1964, providing for compensated counsel in federal courts for indigent defendants charged with felonies or serious misdemeanors, having been enacted and gratifying progress having been made in a number of states, Mr. Powell, as President of the Association, alerted the profession to the magnitude and urgency of the need for counsel in criminal cases; and he skillfully stimulated action by the organized bar to meet that need. He also reminded the bar that its responsibility was no less crucial in the civil justice field.

When the Economic Opportunity Act was enacted in 1964, authorizing community action programs designed to help the impoverished through legal services and other means in local communities across the country, there was considerable concern among some members of the profession as to whether the legislation, because it involved massive participation by the federal government in legal aid, would receive the support of the organized bar. Most lawyers would have preferred local rather than federal solutions. But under the leadership of Lewis Powell, who recognized that the complexities and demands of modern society required legal services assistance that were beyond the will or capacity of the profession, or even states and municipalities to meet, the American Bar Association assumed the national leadership in persuading the organized bar at all levels to embrace the OEO Legal Services Program then before the Congress. This not only helped rekindle the conscience of the bar in a critical area in which it had certainly not distinguished itself, it provided the support the program needed to get off the ground.

In a letter I received from Mr. Sargent Shriver last September, he referred to the magnificent leadership of Mr. Powell in the formulation and the effectuation of the national program. He has praised, too, Mr. Powell's statesmanship in the identification and critical appraisal of its obvious problems and uncertainties. Mr. Shriver added that he had "come to believe that the Legal Services Program small though it is, will rank in history with the great triumphs of Justice over Tyranny . . . (and) one of the brightest achievements in our nation's history."

In recognizing the need for broader and more efficient legal services for the poor, Mr. Powell did not overlook the mounting problems of other segments of the public in obtaining adequate legal services—the millions of persons who are not so impoverished as to be qualified for legal aid but who nevertheless require legal services and cannot afford to pay for them. And so, at his instance the American Bar Association created still another agency, this time to ascertain the availability of legal services to all segments of the society, the adequacy of existing methods and institutions for providing them, the need for group legal programs and their relation to the profession's ethical standards, the most expeditious and effective way to provide such services to a greatly enlarged clientele. "But even as study progresses", Mr. Powell urged, "the organized bar at all levels must press ahead with every available means to improve existing methods. . . . It is axiomatic that those (the legal profession) who enjoy a monopoly position have higher duties and responsibilities. In discharging these the ultimate test must be the public interest."

Recognizing the need for updating the Canons of Professional Ethics including their observance and enforcement, Mr. Powell appointed a new Special Committee on Evaluation of Ethical Standards to deal with that subject. In doing so, he directed the Committee's attention to three examples of the need: (1) Wider discourse on fair trial and free press, lawyers being "a major source that may affect the fairness of trials". (2) The representation of unpopular causes and the providing of aid even to the most unpopular defendants. (3) The need to revise the Canons of Ethics to recognize the need for group legal services through lay organizations such as those involved in the recent decisions of the Supreme Court.

Reporting a growing dissatisfaction with the discipline maintained by the legal profession, he courageously acknowledged that the dissatisfaction was justified and requested that the new canons lay down clear, peremptory rules relating directly to the duty of lawyers to their clients and the courts.

One of the most massive undertakings in the history of the Association undertaken during Lewis Powell's administration as President of the American Bar Association was the project to provide minimum standards for the administration of criminal justice. This encompassed the entire spectrum of the criminal justice process—from prearrest and bail to sentencing, postconviction remedies and correctional treatment. Today, with only one phase remaining to be concluded, the historic Reports of the distinguished committee of judges, lawyers,

and other initially appointed by Mr. Powell provide innovative and effective standards to improve the criminal process. They are under active consideration by legislatures, courts, and law enforcement authorities, and will, in Mr. Powell's prophetic words "help materially in improving the fairness, the certainty and swiftness of criminal justice."

In the area of race relations, the following paragraphs from Mr. Powell's Annual Address are noteworthy: "One cannot think of crime in this country without special concern for the lawlessness related to racial unrest that casts a deep shadow across the American scene. This takes many forms. That which is most widely publicized is the criminal conduct of the small and defiant minority in the South—a diminishing minority that still uses violence and intimidation to frustrate the legal rights of Negro citizens. This conduct is rightly condemned and deplored throughout our country. The full processes of our legal system must be used as effectively, and with as much determination, against racial lawlessness as against all other crime."

He continued: "Every lawyer recognizes that the right of dissent is a vital part of our American heritage. So also are the rights to assemble, to protest, to petition and to test the validity of challenged laws or regulations. But our Constitution and tradition contemplate the orderly assertion of these rights."

There are those who have characterized Lewis Powell as a conservative. I do not like such designations; they are uncertain in meaning and so much of their interpretation lies in the eyes of the beholder. But if Lewis Powell is a conservative, he is one in the classical sense—a man who would preserve the best of existing institutions and forms of government, but not one who has been or ever will be subject to the tyranny of slogans and outmoded formulas. Rather, he is a realist but one who does not merely bow to the inevitability of change; he is hospitable to it, even going out to meet it when appropriate. In the face of changes that are impending, or indeed are already here, which seem overwhelming to many, Lewis Powell is the kind of person who is both undisturbed and unsurprised. He sees such changes as the business of the law and the business of the courts. For while he would recognize that we are headed for a volume and a degree of change in the whole fabric of our life that is wholly without precedent, he would urge that we be equipped in our legal usages, in our vision, in the breadth of our reference, to deal with them, and in view of the urgency to deal with them more speedily than ever before.

He would, I think, call attention to the profound statement of Edmund Burke, who surely would be designated a conservative and who was not an innovator. "We must all obey the great law of change," Burke said, "it is the most powerful law of nature, and the means perhaps of its conservation." It would be Lewis Powell's position, I suggest, that the perpetual challenge to the courts is to accommodate the law to change—in Sir Frederick Pollock's words, "to keep the rules of law in harmony with the enlightened common sense of the nation"

In his public addresses and in his writings, Lewis Powell has expressed forthrightly and candidly his views regarding many of the complex and manifold problems of our society. Based upon those statements and my observations of him, for many years, I am prepared, insofar as ultimate judgment of any man may be forecast by his contemporaries, to predict with confidence that Lewis Powell will be a judge with great fidelity to the best traditions of the Supreme Court, not as a worshipper of the past but as a stimulus toward promoting the most fruitful administration of justice.

I anticipate that his opinions as a judge during these and other troubled times will reflect, not the friction and passion of the day, but devotion to the "abiding spirit of the Constitution". In addition, his extensive experience at the bar and his admirable sense of balance will bring wisdom to the disposition of a considerable body of litigation, outside the passions of popular controversy, that comes to the Court each year. A man of uncompromising honesty—intellectual as well as moral—a man of wisdom and dedication to his convictions, Lewis Powell's singular attributes as a lawyer, his clearheadedness, his resourcefulness, his disciplined intellectual habits, all combined with a due sense of proportion, will, I am sure, enable him to fulfill Mr. Justice Frankfurter's definition of the "duty of justices . . . not to express their personal will and wisdom . . . (but rather) to try to triumph over the bent of their own preferences and to transcend, through habituated exercise of the imagination, the limits of their direct experiences." And at the same time he will in my considered judgment meet Chief Justice Marshall's solemn warning: "We must never forget that it is a Constitution we are expounding . . . a Constitution intended to endure for ages to come and consequently to be adapted to the various crises of human affairs."

Mr. Chairman, it has been uncommonly true in the history of our Court that the challenge of Federal judicial service touches the deepest, most fundamental sensitivities of the men trained in the law who come to the bench. The judge with his personal system of private values will, of all citizens, stand nearest the Constitution with its public system of public values. He will equate the one with the other and in doing so, he will have his unique and precious chance to make sure that American jurisprudence shall have added what Mr. Justice Jackson so eloquently termed "a valuable and enduring contribution to the science of government under law." "Law" he said, "as the expression of the ultimate will and wisdom of the people has so far proven the safest guardian of liberty yet devised." And, Mr. Chairman, I have no doubt that as a Supreme Court Justice, law, as the will and wisdom of the people, is the client Lewis Powell will serve. I believe that as he assumes the lonely and awesome responsibility of making what so often will be irreversible decisions on great and far-reaching questions, he will bring to his task extraordinary capacities, a wise and understanding heart, and a deep and abiding sense of justice. I predict that at the end of his term, Lewis Powell will have joined "the enduring architects of the federal structure within which our nation lives and moves and has its being".

STATEMENT OF HICKS EPTON OF WEWOKA, OKLA.

My name is Hicks Epton. By way of identification I was admitted to the Oklahoma Bar Association in 1932. Ever since I have lived in and practiced law out of the County Seat town of Wewoka, Oklahoma. I have devoted almost all my professional life to the preparation and trial of litigated matters. For five years I was Chairman of the Board of Admissions to the Oklahoma Bar Association. For 12 years I was a member of the National Conference of Commissioners of Uniform State Laws. I was a member of the first Civil Rights Commission of my state and was defending the unpopular cause before it became popular or profitable to do it. By the grace of my peers I am the President of the American College of Trial Lawyers and appear here at the directions of the distinguished Regents of the College who themselves are today on their feet in Courtrooms scattered over the United States.

The American College of Trial Lawyers is an honorary organization of approximately 2300 members called Fellows. It is national in scope and membership is by invitation only. No one is considered for Fellowship in the College who has not successfully and honorably tried adversary causes for at least 60 percent of his time over a period of 15 years. Only those with the highest ethical standards and of impeccable character are considered. Even then the membership is numerically limited to one percent of those licensed to practice law in any State.

The College concerns itself with the improvement of the administration of justice. Illustrative of its specific work is the monumental Criminal Defense Manual which it sponsored and produced, in cooperation with other legal organizations, a few years ago and its later sponsoring of the College for Prosecuting Attorneys. Another example of its work is the careful study, report and recommendations on the Disruption of the Judicial Process published in July, 1970, and which has become a basic document in this vital area. Even now it is studying the prolonged criminal trial and the Class Action problems.

Lewis F. Powell, Jr., has been a long-time Fellow of the American College of Trial Lawyers. He served with great distinction as its President in 1969-1970. Indeed, it was he who conceived the study of the Disruption of the Judicial Process and appointed the Committee which made the study and report.

It has been my good fortune to know Lewis F. Powell, Jr., and his family for many years. I have been intimately associated with him in the work of the College and the American Bar Association. I therefore am pleased to add my personal approval to the official endorsement of the College which at this time I have the honor to lead.

In our opinion Lewis F. Powell, Jr., is easily one of the best qualified men in America for the Supreme Court. He was a superior student in one of the finest law schools in America. Today he is just as serious a student of the law as he was while he was in law school. This seems important because we believe one must first be a good carpenter before he becomes a great architect.

Powell has been and is one of America's outstanding trial lawyers. They come in all sizes, colors, and dispositions; and from every conceivable background. The trial lawyer sips of many sciences and hopefully is blessed by a portion of at least

one art. There are no child prodigies in the field of trial practice. Of necessity a great trial lawyer is a man of compassion because jurors usually are compassionate and the law must assay the facts so the tryer of the facts knows where to bestow the compassion. He must be a man of humility. The writer of Proverbs must have had the trial lawyer in mind when he wrote, "pride goeth before destruction and a haughty spirit before a fall."

The trial lawyer must not always expect to win friends and influence people. He gets his case after infection of the social or business relationship between his client and others. Seldom is there an easy answer and often there is no right answer. He works within the framework of an imperfect adversary system for the simple reason it is all we have and appears to be the best now known. It is small wonder that the English appoint all their high Court Judges from the Bar which is the trial branch of their legal profession. All of this training and self discipline eminently qualifies Lewis F. Powell, Jr., for outstanding work on the Supreme Court. Every Courtroom Powell has entered has been a classroom preparing him for this high purpose.

Although carrying his full share of the heavy practice of a large and busy law firm for many years Powell has always taken time for community work. Even more importantly, we think is his work in the improvement of his own profession and the administration of justice. He believes the members of the legal profession are trustees of it, for the benefit of the public and those who will labor after him, and they have a non-delegable duty to leave the vineyard better than when they entered it. No man has given more than he of his time and energy in the improvement of the administration of justice.

Lewis Powell is endowed by nature with a great mind. By training and self-discipline he has developed what we are pleased to call a judicial temperament. Perhaps it consists of competence, courage and compassion.

Others have asked me to tag him as a liberal or conservative. Frankly, I do not know. I know that he is first, last and always a lawyer, a gentleman and industrious and has the courage to do his duty "as God gives him the light to see it".

STATEMENT OF MAYNARD J. TOLL

My name is Maynard J. Toll. I have practiced law in Los Angeles for more than 40 years, and am one of the senior partners in the firm of O'Melveny & Myers of that city.

I am sure this committee would prefer that I avoid glittering generalities about Mr. Lewis A. Powell, and speak of specifics about which I have personal knowledge. This I shall do.

First, and of utmost importance, is the prime role he played in leading the lawyers of this country to take an affirmative position regarding the proposed Legal Services Program of the Office of Economic Opportunity, and to this accomplishment I will direct the bulk of my testimony. My qualification to speak authoritatively on this subject is that from the Fall of 1966 to the Fall of 1970, I was President, and for several preceding years had been Vice-President, of National Legal Aid and Defender Association, whose sole objective is to bring first class legal services to those who cannot afford a fee.

Shortly after the Economic Opportunity Act became law in 1964 it became apparent that the Act could be used to channel federal funds into the provision of legal services for the poor. At that time the legal aid program was limping along on an annual budget, nation-wide, of the order of magnitude of \$5 million. Here was the first hope for a massive infusion of new money, with a view to the immediate amelioration of the legal problems of thousands of people who previously were wholly without access to a lawyer.

Even more important was the promise that the interests of the poor as a total group would be competently and aggressively asserted for the first time before our courts and legislative bodies, leading to reforms which, over a period of time, might alter basically and drastically the status of the poor in our legal-economic-political system.

The proponents of these plans recognized that their successful implementation would be impossible if it encountered the opposition of the organized Bar of the nation. Given the generally conservative orientation of the Bar such opposition was a real possibility. Only the most optimistic dared hope for an affirmative endorsement by the legal profession as a whole.

Happily, Lewis Powell, President of the American Bar Association from 1964 to 1965, understood the need and had the vision and the courage to see and to seize the opportunity. Refusing squarely to follow the example of the medical profession, and refuting the alarmist argument that this would be socialization of the law, Mr. Powell exerted persuasively and effectively the great prestige of his office and achieved the support of both the Board of Governors and the House of Delegates of the American Bar Association for this new program.

The result was a tenfold increase in the quantity of legal services available to the poor, widespread participation in the program by lawyers throughout the country, active leadership in individual programs by scores of state and local bar associations, the observance of high professional and ethical standards in the interests of poor clients, and a quality of legal representation that is generally on a par with or better than that available to many paying clients.

All this could not have happened without the blessing of the American Bar Association. While Lewis Powell cannot be credited solely with the result, one must have very serious doubt that it could have been brought off without his aggressive leadership. It is beyond doubt that had he been in opposition the proposal would have failed.

During the four years of my presidency of National Legal Aid and Defender Association we had many occasions to express our corporate gratitude to Lewis Powell for what he had done, and I am pleased to bring that same witness to this honorable body today.

Secondly: At the same time that civil legal services were proliferating under the spur of OEO funds, the National Legal Aid and Defender Association was sponsoring a series of demonstration projects in the field of legal services for poor persons accused of crime. This so-called National Defender Project, financed by the Ford Foundation, attracted Mr. Powell's interest and enthusiasm, which assured full cooperation and participation by the American Bar Association. This Project has brought as significant help to poor people, although not as dramatic, as the OEO Legal Services Program.

Finally, I am sure others have testified, or will do so, regarding Lewis Powell's immeasurable contribution of talent, patience, wisdom and common sense to the American Bar Foundation. Of this important adjunct of the ABA he has been President for the past two years, during which I have had the privilege of serving as a director. In this role, time and again he has displayed these qualities, which will make him a great Justice of the United States Supreme Court.

STATEMENT OF PHIL C. NEAL, DEAN AND PROFESSOR OF LAW, THE UNIVERSITY OF CHICAGO LAW SCHOOL

My name is Phil C. Neal. I am Dean of the Law School of the University of Chicago, and I have been a law teacher for approximately 22 years, first at Stanford Law School and for the past ten years at the University of Chicago. My principal fields of interest during this period have been Constitutional Law, Administrative Law, and Antitrust Law. I am one of a group of law teachers working on a history of the Supreme Court commissioned by Congress under the bequest of Mr. Justice Holmes and being carried out under the general editorship of Professor Paul A. Freund of Harvard University. Perhaps it may be relevant to add that my special interest in the Supreme Court, and probably the views I hold as to the role of the Court and the standards its members should meet, owes a good deal to my experience in the 1943 and 1944 Terms of the Court in which I had the good fortune to serve as law clerk to the late Justice Robert H. Jackson.

I am grateful for the opportunity to appear before the Committee today in support of the nomination of Mr. Lewis F. Powell, Jr., to be an Associate Justice of the Court.

I am sure the Committee is fully informed from other and better sources as to the details of Mr. Powell's professional accomplishments, his public service, and his role as a leader of the organized legal profession. I should like only to add a few words in the nature of a personal appraisal, based on the particular relationship in which I have had the privilege of knowing him.

My association with Mr. Powell has been through the work of the American Bar Foundation. The Bar Foundation is a research organization, devoted to improving the understanding and workings of our legal system through scholarly investigation and publication. When it was established by the American Bar Association, the Foundation was located at the American Bar Center on the

University of Chicago campus, partly in the thought that such an enterprise would gain from being carried on in proximity to a national law school. The relationship between the Foundation and the University of Chicago Law School has been a close one. As dean of the Law School I have been a member of the board of directors, of the executive committee, and of the research committee of the Foundation for the past seven years. Mr. Powell has been a member of the board of directors during that entire period. For the past two years he has been President of the Foundation. I have had the opportunity not only to observe Mr. Powell during many meetings of the board but also to work closely with him on numerous problems of joint concern to the Law School and the Foundation. My impressions have also been formed indirectly through two of my colleagues on the faculty of the Law School who have served as Executive Directors of the Bar Foundation during Mr. Powell's tenure.

I can best summarize my views by saying that there is no practising lawyer of my acquaintance whom I would think better fitted to serve on the Supreme Court than Mr. Powell. I may add that this is a view that I have held since long before Mr. Powell's nomination.

I believe Mr. Powell has that exceptional strength of intellect that ought to be the first requirement in a Justice of the Supreme Court. His knowledge of the law has always struck me as that of a first-class generalist. He has a sharp sense of relevance, and a gift for putting his finger on the crux of a problem. He is an attentive listener; his receiving apparatus is fine-tuned. I expect it would be a joy to argue cases before him, for I believe no lawyer could fail to feel that his argument was being heard and understood. Among his other qualities, Mr. Powell is a master of precise and economical expression, a talent that I am afraid is not to be taken for granted among lawyers, even among Justices of the Supreme Court.

Apart from his technical and intellectual proficiency, Mr. Powell has always impressed me as a man with breadth of vision, understanding of current problems and forces in our society, and balanced judgment. He is scrupulously fair. His unflinching courtesy is a reflection, I believe, not merely of good manners but of an instinctive regard for the dignity and worth of other human beings. In his role at the American Bar Foundation he has demonstrated an appreciation for scholarly values and a capacity to recognize the long-range significance of ideas. He has shown a deep concern for improving the legal system, especially in relationship to such major problems as the administration of criminal justice and the adequacy of representation of the poor.

So far as my observation goes, Mr. Powell is a man without dogma or prejudice or any predetermined approach to issues. His concern is with problems, not doctrine. I recall an occasion, Mr. Chairman, when Mr. Justice Jackson was referred to in a newspaper column which was attempting to classify members of the Supreme Court in one way or another. The columnist spoke of Justice Jackson in a somewhat derogatory way as being "unpredictable." The Justice was considerably amused. He remarked that he had never thought it the highest compliment you could pay a judge to say that he was predictable.

I believe that was Mr. Justice Jackson's way of saying that he regarded himself first and foremost as a lawyer. I suspect the same thing is true of Mr. Lewis Powell. I believe that that outlook is a promising foundation for wise and enduring contributions to the development of our fundamental law. My conviction is that Mr. Powell's qualifications justify the expectation that he would become a distinguished Justice of the Supreme Court of the United States.

STATEMENT OF GEOFFREY C. HAZARD, JR., YALE UNIVERSITY, NEW HAVEN, CONN.

My name is Geoffrey C. Hazard, Jr. I have been Professor of Law at Yale University since 1970, and teach in the fields of procedure, judicial administration and the responsibilities of the legal profession. I am a member of the bars of Oregon and California and practiced in both those states. Prior to coming to Yale University, I have taught in the law schools of the University of California, Berkeley (1958-64), and the University of Chicago (1964-70). In addition, from 1960 to 1970 I was Executive Director of the American Bar Foundation, the research affiliate of the American Bar Association. In that capacity I came to know Lewis F. Lowell, Jr.

Mr. Powell was a member of the board of directors of the American Bar Foundation during the entire period in which I was Executive Director. He was a member of the Foundation's Executive Committee for most of those years. He was the President of the Foundation beginning in 1968 and through the end of my service

with that organization. By reason of his responsibilities in this regard, I had the opportunity to work closely with him on a wide range of problems affecting the Foundation, the legal profession and the administration of justice. In virtue of his unusually open mind and generous spirit, the exchanges of ideas that took place between us were frequent and extensive. As a result, I believe I have as full and accurate an estimate of Mr. Powell's qualities of mind and character as anyone whom I have known in the course of my professional life.

Lewis Powell is the finest man of the law I know. He has first class powers of intellect, being able to grasp the essentials of any problem quickly and to pursue its complications to their end. He has judiciousness of temperament equalled by few and exceeded by none that I have met. He has great patience. He is able to give genuine consideration to ideas with which he does not agree and to alter his own views when persuaded. He has very broad knowledge, not only of the law but of the affairs of life and mind generally. He has unflinching concern for others and their interests. He is easy to work with and for.

At the same time, Mr. Powell is very practical, decisive and persevering. He believes in doing things well and properly. He does his work conscientiously, diligently and with great energy. In the affairs of the American Bar Foundation, among the company of some of the country's leading judges, lawyers and legal scholars, his judgment on any matter of moment was always heeded and usually held sway.

Mr. Powell's views differ from my own on many points. In general, I would describe him as considerably more conservative. Yet I have always had the greatest confidence in presenting ideas and proposals to him. He invariably seeks to establish at once the areas of agreement, to illuminate the areas of disagreement as distinctly as possible, and to formulate solutions that do the least avoidable damage to considerations which others feel are important. He is thus at the same time a thoughtful interlocutor, a firm arbitrator and a peace-maker. These qualities seem to me especially fit in a member of the Supreme Court.

STATEMENT OF DEAN MONRAD G. PAULSEN

Gentlemen:

I wish to make a short statement in support of the confirmation of Mr. Lewis Powell of Richmond as an Associate Justice of the Supreme Court of the United States.

Mr. Powell's record has, of course, been fully documented and laid before this Committee. There is no need for me to attempt the comprehensive statement of the reasons I think Lewis Powell should be confirmed. The purpose of my statement is to add emphasis from a particular interest of mine.

For a number of years, I have been studying the general question of the availability of legal services in the United States. When Lewis Powell was President of the American Bar Association one of the great issues laid before the House of Delegates was the question whether the federal program for legal services for the poor operating out of the Office of Economic Opportunity should be supported by the Bar. Mr. Powell's energetic leadership and firm conviction that equal justice for the poor man as well as the rich man prevented the Bar from making the serious mistake which the medical profession has made time and time again in resisting programs for publicly-supported health care.

Today, over 2,000 lawyers in several hundred offices are serving the needs of the poor with the cooperation and help of members of the Bar. The program has been greatly improved by the contributions and guidance which the Bar has given.

Throughout its history, the Office of Economic Opportunity Legal Services Program has been supported by organized Bar and an effective plan for realizing justice has become a reality.

More than any single person, Lewis Powell is deserving of the praise which is appropriate to the founder of an enterprise.

Senator BYRD. Mr. Chairman, may I say for the information of the committee that some of the names which the chairman called are persons who are not in the room because they had not been informed of the change in the schedule. That is the reason that some did not rise when their names were called. I wanted to make that clear.

Senator McCLELLAN. Mr. Chairman, I would like to state for the record at this time that I have received letters endorsing both of these nominees, and one letter in particular from Mr. Edward L. Wright of Little Rock, Ark., immediate past president of the American Bar Association. I will ask to be permitted to introduce this into the record at this time. Since all of these witnesses are here this morning to testify or place statements in the record for Mr. Powell, I think it appropriate at this time to introduce this communication from the immediate past president of the bar association.

The CHAIRMAN. It will be admitted.

(The letter referred to follows.)

LITTLE ROCK, ARK.,
November 2, 1971.

HON. JOHN L. McCLELLAN,
U.S. Senator,
Washington, D.C.

DEAR JOHN: I wish to reiterate my deep and continued appreciation for the affirmative interest you took in proposing me as a possible nominee to the Supreme Court of the United States. From the beginning I felt that my age was an insurmountable obstacle.

While all of us here have a natural and understandable disappointment in the failure of the President to nominate Herschel H. Friday, I am glad that the President came forth with the names of two excellent men. I have known Lewis F. Powell, Jr., intimately for many years and have worked extremely closely with him in many American Bar Association matters. He is a truly great man, whether measured by his impeccable character, his outstanding intellect, or his unselfish activities in the genuine public interest. In my opinion he will become one of the outstanding and recognized jurists of all times to sit on the Supreme Court of the United States.

I am not well acquainted personally with Mr. William H. Rehnquist, but I feel that he has all of the proper credentials to make an excellent member of the Supreme Court. For these reasons I trust that the Senate will promptly confirm both of them.

With warm regards and every good wish, I am

Sincerely,

EDWARD L. WRIGHT.

Senator BAYH. Mr. Chairman, is it appropriate to inquire for the benefit of the committee members what the schedule is going to be?

I was left with the gavel last evening and I advised our colleagues that some of our brethren on the Republican side would have an opportunity to address themselves to the previous witness.

The CHAIRMAN. You were not present when we began. The two Virginia Senators want to go to Senator Willis Robertson's funeral and they are presenting the nominee at this time.

We will go back to Mr. Rehnquist as soon as—

Senator BAYH. That is perfectly fine with me, Mr. Chairman. I just wanted to know what we could expect for the rest of the day.

The CHAIRMAN. Thank you, gentlemen.

Senator BYRD. Thank you.

TESTIMONY OF WILLIAM H. REHNQUIST—Resumed

The CHAIRMAN. Senator Burdick is recognized.

Senator BURDICK. Mr. Chairman, I would like to congratulate the nominee selected by the President.

Much of this ground has been gone over already. I would like to ask one question. Would you like to elaborate on your concept of stare decisis?