

I would take that his conscience and his very soul will wrestle with every case until he can live in peace with a decision that embodies a sense of decency and fair play and common sense.

That is quite a testimonial, I would say, Mr. Powell, and I want to compliment you on the confidence that this lady has in you.

Mr. POWELL. It is far more than any man deserves and I appreciate your reading it.

(The letter referred to follows:)

URBAN LAW INSTITUTE OF ANTIOCH COLLEGE,
Washington, D.C., November 3, 1971.

Senator JAMES O. EASTLAND,
Chairman, the Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: It is a matter of general knowledge and public record that the American Bar Association endorsed the Office of Economic Opportunity legal services program during Lewis F. Powell, Jr.'s tenure as ABA President. There are, however, few who stand in a position to speak on the basis of first hand knowledge of the extensiveness of Mr. Powell's role, the depth of his involvement, or the extent to which he played not only an initiating but also a continuing role both in securing the support of the organized bar and in moving to insure that the OEO Legal Service program remained true to its mission.

My letter is limited to those matters known to me personally in my capacity as the official charged with operational responsibility for bringing the Legal Service Program into being and for representing the OEO through months of intense discussions. These negotiations culminated in the February 8 resolution of the American Bar Association, and subsequently in the public reaffirmation of the understanding on the occasion of the first personal contact between Mr. Shriver and Mr. Powell at the February 17 meeting of the Planning Committee for Legal Services.* Subsequent to February 17, my husband (who was Sargent Shriver's Special Assistant) and I served as a continuing liaison between the OEO and the organized bar (and Mr. Powell more specifically) in order to insure that those basic understandings were in fact honored in the process of implementation. From August of 1965 up to the present date I have served as a member of the National Advisory Committee of the OEO Legal Services Program. In that capacity, I have had continuing opportunity to observe both Mr. Powell's statesmanship in broadening the organized bar's commitment to legal services and equally the effect of his fierce insistence on preserving the professional integrity of the program and insulating the program from any improper political pressures. The extraordinary impact that Mr. Powell's efforts had then, and the imprimatur they have left on the Legal Service Program—still clearly evident some seven years later—have direct bearing upon the matter presently before your committee.

Today almost 7 years later, it is difficult to communicate the atmosphere of of suspicion, caution and outright distrust which surrounded those first exploratory talks. The legal profession was suspicious of the OEO, and OEO was suspicious of the organized bar.

The distance to be bridged could hardly have been cast more symbolically than to ask a white lawyer from the ranks of Southern aristocracy leading the then lily-white AVA and a black woman lawyer representing the "feds" to hammer out a relationship of trust and cooperation.

I approached the negotiations with some misgivings despite direct personal assurances of support from Mr. Powell on January 12 and 22. It was not until the beginning of the 1st week in February of 1965 after Mr. Powell and his staff (Lowell Beck and Bertran Early) initiated daily rounds of consultations and briefings for myself and my staff did I begin to believe that Mr. Powell was prepared to use all the prestige and power of his position as President of the ABA to gain the formal and continuing support of the organized bar to make the goal of the fledgling legal service program—equal access to justice—a reality.

Within OEO, the memory of AMA's resistance to Medicare was still vivid, and negotiations with the bar were *a priori* assumed to be the equivalent of consorting with the enemy. OEO's bias was reinforced by the suspicion and distrust with which the poor looked upon law and the legal profession.

* (See Attachment I, letter from Sargent Shriver to Jean Camper Cahn, and Attachment II, article by Sargent Shriver, *ABA Journal*, June 1970.)

Lewis Powell had at least as difficult an obstacle to cope with, flanked on one side by the so-called "old line" legal aid agencies that demanded monopoly control of any government funds for legal aid, and on the other side by lawyers fundamentally distrustful of any governmental involvement. Orison Marden, who was later to succeed Powell as President of the ABA, recalled the dilemma in these words in an address at Notre Dame in 1966:

"Yet, when the Office of Economic Opportunity announced its willingness to assist in financing legal services for the poor, many lawyers were skeptical and suspicious. Here are some fairly typical reactions:

"What is big brother up to now?

"Are we going to be 'socialized' by snooping 'Feds' from Washington?

"Will the Federal program help or hurt our legal aid society?"

"Will the Federal program compete with the bar, especially with the struggling neighborhood lawyer?"

These and similar questions were the natural concern of many lawyers and bar associations throughout the land.

Such was the situation which confronted the national leadership of our profession in late 1964. Lewis F. Powell of Richmond, Virginia was then President of the American Bar Association. In my opinion, he will go down in history as a great statesman of our profession. Conservative by nature and environment, President Powell saw the opportunities as well as the dangers in the new program.

In deciding to respond affirmatively, Lewis Powell knew that the leadership was ahead of "the troops", and yet he decided to take the gamble.

On February 17 at the Planning Committee meeting in Washington, nine days after the historic resolution, Lewis Powell bluntly told Sargent Shriver and those assembled:

"The success we had at New Orleans in bringing the House of Delegates of the American Bar Association along with the concept of cooperating with the OEO, I think, should not mislead us into thinking that the bar of the United States is prepared for this yet.

"I think the truth is that most of the lawyers know as little about what the OEO is planning to do as I knew two months ago. . . ."

There can be no doubt about the fact that Lewis Powell placed his credibility and leadership on the line, with full awareness of the risks and dangers, but impelled nonetheless by his own deeply held sense of the profession's public trust.

Mr. Powell knew that nominal endorsement was not enough. The organized bar had to support and implement its decision. That support could not be half-hearted or extracted at the cost of bitter and lasting schisms. And this had to be accomplished in nine weeks time.

The events that followed speak for themselves.

The historic endorsement was passed not once but three times: first, by a conference of 60 representatives of concerned ABA committees and sections; second, by unanimous vote of the Board of Governors in an even stronger form; and finally, by unanimous vote of the House of Delegates.

Within the next 24 hours, Sargent Shriver dispatched a telegram of congratulations particularly saluting the bar for its flexibility in holding "no brief for any one solution" and for its "willingness to concentrate on the need, to shape your response to fit the need, and to innovate where needs calls for innovation."

By return mail Lewis Powell thanked Sargent Shriver for the telegram which was received in time to be read to the entire House of Delegates prior to adjournment.

Yet that resolution was only the most visible and symbolic of many actions which Powell felt were needed to give substance to that resolution.

Although Mr. Powell believed that the Canons of Ethics would not inhibit legal service lawyers in providing full service to their client, he agreed to seek a clarification of the matters that troubled legal service lawyers in the then contemplated revision of the Canons. Under the direction of William Gossett the Canons and the Code of Ethical Responsibility has brought clarity to the role of the legal service lawyer.

It was under Mr. Powell's leadership that some eleven odd committees and sections of the ABA dealing with matters relating to legal representation for the poor were reorganized, consolidated and strengthened.

Mr. Powell also played a key role in shaping the National Advisory Committee to the Legal Service Program. On February 16, 1968, the Law and Poverty Planning Committee which was to evolve into the powerful National Advisory

Committee met for the first time in Washington. As Sargent Shriver has stated officially for the record:

"The composition of that committee was the subject of intensive review by both the OEO and the Association. The principles that guided the selection of this initial group also governed the subsequent selection process that determined the composition of the National Advisory Committee."

For the legal Service Program to flourish it was necessary that lawyers of all races work together. Thus, Lewis Powell reaffirmed the American Bar Association's desire for affiliation with the National Bar Association (the association of black lawyers); the National Bar Association responded affirmatively and provision for the NBA's involvement was, of course, made in determining the composition of the Planning Committee and its successor, the National Advisory Committee. Today, because of that breakthrough in establishing a working relationship, the National Bar Association and the American Bar Association have pursued a course of cooperation in many areas.

Symbolically, the Chairmanship of the planning committee meeting on February 16 was shared by Sargent Shriver and Lewis Powell. In the course of that meeting Mr. Powell articulated several cardinal principles which were to become firmly embedded in the official policy of the Legal Service Program of the Office of Economic Opportunity.

1. The poor should receive "across-the-board legal services"; past coverage has been inadequate. Herein lies the genesis of the policy that the poor were entitled to representation in every forum and in every way in which the non-poor now receive legal representation.

2. Indigency standards must be flexible and be shaped locally in response to real need.

3. The new OEO program should not be used in the criminal field to the extent possible in order not to discourage State legislatures from going ahead on their own responsibility. Mr. Powell said:

"To put it differently, I don't want a State legislature to get the idea that the OEO and organized bar will relieve it of responsibility for providing appropriately for the defense of indigents in criminal cases."

4. The program for rendering of legal services to the poor had to maintain the highest standards of professional integrity and that coordination of this program with other services could not be permitted to erode that integrity.

5. A national campaign to educate the profession as to the legal needs of the poor had to be launched. Discussion centered around a national conference—which had been agreed to and was, in fact held. But Mr. Powell, personally, undertook to use the status and prestige of his office and of the ABA nationally to allay the fears, clear up the misunderstandings and win the cooperation and support of county and state bars which, in some sense were violently opposed to the program. In this connection, Mr. Powell relied heavily on moral suasion and the credibility of his position and background. I admit I grew frustrated sometimes at his deference to local sensibilities when it seemed unduly solicitous of obstructionists. Yet his own personal credibility used unsparingly, paid off handsomely in generating a broadly based sentiment of support within the bar for legal services.

6. Subsequently, Powell took a lead role in supporting the proposition that the client community to be served should be represented on the board of directors of local legal service programs while at the same time refusing to accept any inflexible, mechanical formula.

The meeting ended with a resolution that a steering committee would undertake responsibility, both for planning the national conference and for providing guidance in the development of policies and guidelines for legal service grants, a role that was to become a central prerogative.

In short, the cornerstone of the legal services program—in terms of mission, constituency, non-partisan support, shared decision-making by the profession and officials, all these had been articulated and established by Lewis Powell at the outset—not to secure control as an end in itself—but, rather to insure that the highest professional standards obtained and that the professional integrity of the program was preserved against improper pressure.

Yet, even beyond these contributions, Powell was to embark on one other course of action that perhaps in the long run has meant as much to the survival of the Legal Services Program as the intense team effort that culminated in the ABA resolution of February 8. Between the February 16th meeting—and the next meeting of the ABA in August (which marked the end of Lewis Powell's term of office), there was a grave and nearly fatal interregnum in the legal services program.

Policy remained unformulated; conflicting instructions, rumors and draft guidelines circulated; grantmaking ground to a halt—and whatever precarious relationship of trust and good will that had been built so painstakingly was stretched to the breaking point. In fact, there was every sign of a major revolt by a reactionary element within the bar—emerging at the state and local level—which threatened to lead to a total severance of all relationships and withdrawal of endorsement. The bar had made good on all its promises—and more. The federal government was in default. And it took a singular combination of firmness, tact, diplomacy, and political maneuvering to set up a special plenary session to which Sargent Shriver was invited as keynote speaker—with commentary by two moderately critical and well known figures in the bar. Powell was quite appropriately designated as moderator for this session. Once again the negotiations began; but the crux of them was that Powell was once again prepared to put his own prestige on the line and utilize the full weight of his position if Sargent Shriver was prepared to reaffirm unequivocally OEO's commitment to a legal service program consonant with the highest traditions of the profession and to deal with each of the old controversial issues that had flared up. Sargent Shriver did so in a major statement characterized by bluntness, candor, and specificity that was no accident. In the March issue of the 1971 ABA Journal Sargent Shriver recalls that period:

"After February there was a hiatus and lull in communications. During that time misunderstandings arose, and it became important to reaffirm the commitments made earlier by my staff and by me and to spell out publicly what form the relationship of the organized bar would take. In August of 1965 at the annual meeting of the American Bar Association in Miami Beach, I spoke extensively concerning the understanding which the agency had regarding the legal services program generally and its relationship to the organized bar in particular. It was at that time that I publicly announced the formation of the National Advisory Committee:

"We will shortly establish a National Advisory Committee on Law and Poverty to the community action program, a committee which will play a key policy making role. We have extended twenty-one invitations. Among those who have accepted membership on that committee are Lewis Powell, Orison Marden, Edward Kuhn, Theodore Voorhees, John Cumiskey and William McCalpin.

"That group can be just a paper group—a sop thrown out to quiet the bar. But that is not our intention. We mean business. We want—we need—this group to assume a leadership role in determining how we ought to proceed cooperatively, what procedures and internal organization we need and what kinds of guidelines we ought to establish. The bar—and I should add we also have representation from the National Bar Association—has heavy representation some would charge over heavy representation) on this committee. But we believe in you—and you have more than justified that faith last February. If any one has slacked off or defaulted, it has been us! So I say to you today, it will be your job as well as ours—the job of your representatives and leaders to see to it that that committee is no paper organization but a powerful and vital force."

Once again Mr. Powell energized all his resources to see that an agreement entered into in good faith could be reconstituted. Mr. Powell's willingness to do everything within his power to see that OEO created a National Advisory Committee to serve as the agency's official internal vehicle for consultation was the organized bar and the profession has to my mind been crucial in securing a strong and vital program for rendering legal service to the poor.

As the House Committee report on the 1967 amendments to the Economic Opportunity Act (H. Rep. No. 866, 90th Cong. 1st Sess. 24-25 1967) indicated expressly, Congress relied upon the National Advisory Committee to serve as guarantor of the maintenance of professional standards and attributed the success of the program in large part to the unique role the National Advisory Committee had played in guiding and policing the program.

As Sargent Shriver commented:

"The factor that to my mind made the NAC so effective was that it was brought into being, shaped and expanded by a process of mutual consultation with the whole spectrum of the organized bar; its composition and its areas of concern were the result of joint deliberations as to the kind of body which could best insure the maintenance of the professional integrity of the program. Once those underlying agreements were reached neither party felt free to tamper with them unilaterally or to break the underlying relationship of good faith and mutuality."

It is typical of Lewis Powell that his role in this entire sequence should have remained so obscure and that he was prepared publicly to accept an invitation to

serve on the National Advisory Committee. That was Lewis Powell's way of assuring that the integrity of the Legal Service Program would be maintained.

But nowhere will you find it recorded that, prior to Sargent Shriver's public reaffirmation in Miami, the summer of 1965 was a long hot summer for Lewis Powell. In this commentary I cannot forbear to mention that I know Mr. Powell to have been the moving figure behind an invitation extended to me by the President of the Junior Bar to address a plenary session. And so far as I have been able to ascertain, I was the first black lawyer, male or female to address a plenary session at the ABA's annual meeting.

Since that time, I have had the pleasure of personal chats with Lewis Powell—and have, in my capacity as Director of the Urban Law Institute referred to him indigent clients who needed a lawyer in Richmond and who received representation from his firm.

Those are, in sum, the facts known to me personally. They reveal Powell's involvement in the launching of Legal Service—the nurturing of it through the most critical ten months—to be far more extensive than has been generally known or assumed.

But for me they say more than that about the man. They are the pretty nearly the sum total of what I know about him. Yet within this context, they permit me to say that this is a man of principle—who when he pledged his word kept it—and who has a peculiar and most tenacious notion that when a government official pledges his word, he too should honor it.

As a black person who has seen many promises made and not kept, it has been all too rare an experience to find a man who not only holds to such a belief—but who is prepared to back that belief with all the resources and stature and skill at his command.

In the context in which I have known him he has come to symbolize the best that the profession has to offer—a man imbued, even driven, by a sense of duty, with a passion for the law as the embodiment of man's ordered quest for dignity. Yet he is a man so curiously shy, so deeply sensitive to the hurt or embarrassment of another, so self-effacing that it is difficult to reconcile the public and the private man—the honors and the acclaim with the gentle, courteous, sensitive spirit that one senses in every conversation, no matter how casual. And it is an unceasing source of wonder to me that so much seems to get done without any sense that the man is ever burdened, hurried, under strain or unable to give you his full and undivided attention.

By way of final observation, I would note that while I support Lewis Powell's nomination—and have limited the scope of my remarks to those facts which I know at first hand—I do not base that support on the fact that Mr. Powell is a supporter of the Legal Services Program. My support is more fundamental—because I would expect that while we agree on some things, we would disagree on others. I would not want to rest my support solely on agreement or disagreement on some particular subject.

My support is based upon the fact that I am drawn inescapably to the sense that Lewis Powell is, above all, humane; that he has a capacity to empathize, to respond to the plight of a single human being to a degree that transcends ideologies or fixed positions. And it is that ultimate capacity to respond with humanity to individualized instances of injustice and hurt that is the best and only guarantee I would take that his conscience and his very soul will wrestle with every case until he can live in peace with a decision that embodies a sense of decency and fair play and common sense. In that court of last resort to which I and my people so frequently must turn as the sole forum in which to petition our government for a redress of grievances, it is that quality of humanity on which we must ultimately pin our hopes in the belief that it is never too much to trust that humanity can be the informing spirit of the law.

Sincerely yours,

JEAN CAMPER CAHN, *Director.*

The CHAIRMAN. Senator Scott?

Senator SCOTT. Mr. Chairman, I really will not take the time of the committee at any length at all and perhaps for a different reason.

I confess to a certain modesty, Mr. Powell, in attempting to develop any legal knowledge of mine that would even thrust itself in a cross-examination of you, because you are an eminent lawyer with the highest qualifications I have known for many years, and were I to