

person had gone through the State system he would have received his constitutional rights; and, second, there would be a record of it so that there would be no occasion for Federal de novo review and starting the whole chain back through the courts.

If you would move to the area of appellate practice, I think any lawyer who has been in the appellate courts will recognize that much can be done to speed appellate practice, particularly with respect to the requirements for records.

My circuit, the fourth circuit, has been a leader in minimizing the requirements for records. I think a great deal more can be done. I think a great deal more can be done, perhaps, in exercising restraint in the writing of opinions by judges. At the moment I am not addressing myself to the Supreme Court; I am thinking perhaps about all courts and when one looks at the flood of cases that come into one's law library, and the feeling apparently that every judge has to write an opinion at the district court level—of course, he must make findings of the fact and conclusions of law, and sometimes a case requires an opinion—but there are many things in this broad area that can and must be done so that the entire system can be expedited.

Senator TUNNEY. Thank you very much, Mr. Powell.

I heard before you came before this committee, after you were nominated by the President, that you were a man of brilliance, compassion, and imagination, and certainly your testimony here today has demonstrated those qualities.

Thank you.

Mr. POWELL. I thank you very much, sir.

The CHAIRMAN. You made a very fine witness.

Senator HART. I want to ask one question that I did not ask Mr. Powell.

Mr. Powell, in your writings or speeches in the past, have you taken a position on capital punishment?

Mr. POWELL. No, sir. I would say this, the Crime Commission did take a position on it in which I concurred in the recommendations.

Senator HART. I have been trying to find out what that recommendation of the Commission was ever since it came out.

Mr. POWELL. I could find it if I had the volume of the report. I have not looked at it for a long while.

Senator HART. Well, thank you. Mr. Chairman, if that question could be addressed for receipt in writing from Mr. Rehnquist, I would appreciate it. I forgot to ask that question: had he spoken or taken a position on capital punishment. Could we address that question to him?

The CHAIRMAN. Why, of course.

(The following letter was subsequently received from Mr. Rehnquist:)

DEPARTMENT OF JUSTICE,
Washington, D.C., November 10, 1971.

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

DEAR MR. CHAIRMAN: I understand that during the questioning of Lewis Powell on November 8, Senator Hart asked him whether he had spoken or taken a position on capital punishment. I also understand that Senator Hart requested that, with your acquiescence, I be asked to supply an answer to his question.

A review of my recent speeches and comments, copies of which have been sent to your Committee, indicates that I have not there discussed this subject. Additionally, I cannot recollect that apart from these statements I have ever publicly discussed this question.

In the course of my testimony before your Committee last week, Senator Bayh asked if I would object to compiling a list of my former clients for the Committee. Although I do not recall being asked formally by the Committee to forward such a list, the following are representative clients of my former firm in Phoenix as listed in the 1969 edition of Martindale-Hubbell (which, as I recall, would have appeared in print in January, 1969): American District Telegraph Co.; American Optical Co.; Butler Homes, Inc.; Casa Blanca Construction Co.; Sherrill & LaFollette; Remington Rand Division of Sperry Rand; Transamerica Title Insurance Co.; Arizona Testing Laboratories; National Insurance Underwriters; Town of Paradise Valley; D. N. & E. Walter Co.; Blake, Moffitt & Towne; Cactus Beverage Distributing Company of Arizona; True Childs Distributing Co.; Valley Vendors Corp.; Herb Stevens, Inc., Lincoln-Mercury; Time Realty, Inc.

Sincerely,

WILLIAM H. REHNQUIST,
Assistant Attorney General,
Office of Legal Counsel.

Mr. POWELL. You do not wish any further response from me?

The CHAIRMAN. Sir?

Mr. POWELL. I was asking Senator Hart whether he wished any response from me.

Senator HART. No. Thank you, Mr. Powell.

The CHAIRMAN. You are excused.

Thank you, sir.

Mr. POWELL. I wish to thank the chairman and the members of the committee for this very generous opportunity to appear before you in what to me, at least, has been a very stimulating discussion. I thought all of the questions were relevant and fair, and it has been a great pleasure and privilege to be here.

The CHAIRMAN. Thank you, sir.

Now, the committee will recess until 10:30 tomorrow morning. We are going to meet in the Judiciary Committee hearing room. We are going to hear the witnesses against the two nominees and also some other witnesses for them.

Senator SCOTT. Is that room 2300, Mr. Chairman, for the benefit—is that the room number?

The CHAIRMAN. It is the Judiciary Committee hearing room.

Senator SCOTT. Room 2228. I just say it for the benefit of those who might wish to be there.

(Whereupon, at 4:20 p.m., the committee adjourned to reconvene Tuesday, November 9, 1971, at 10:30 a.m.)