

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