

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

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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