

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 prearraignment 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