

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".

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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

one art. There are no child prodigies in the field of trial practice. Of necessity a great trial lawyer is a man of compassion because jurors usually are compassionate and the law must assay the facts so the tryer of the facts knows where to bestow the compassion. He must be a man of humility. The writer of Proverbs must have had the trial lawyer in mind when he wrote, "pride goeth before destruction and a haughty spirit before a fall."

The trial lawyer must not always expect to win friends and influence people. He gets his case after infection of the social or business relationship between his client and others. Seldom is there an easy answer and often there is no right answer. He works within the framework of an imperfect adversary system for the simple reason it is all we have and appears to be the best now known. It is small wonder that the English appoint all their high Court Judges from the Bar which is the trial branch of their legal profession. All of this training and self discipline eminently qualifies Lewis F. Powell, Jr., for outstanding work on the Supreme Court. Every Courtroom Powell has entered has been a classroom preparing him for this high purpose.

Although carrying his full share of the heavy practice of a large and busy law firm for many years Powell has always taken time for community work. Even more importantly, we think is his work in the improvement of his own profession and the administration of justice. He believes the members of the legal profession are trustees of it, for the benefit of the public and those who will labor after him, and they have a non-delegable duty to leave the vineyard better than when they entered it. No man has given more than he of his time and energy in the improvement of the administration of justice.

Lewis Powell is endowed by nature with a great mind. By training and self-discipline he has developed what we are pleased to call a judicial temperament. Perhaps it consists of competence, courage and compassion.

Others have asked me to tag him as a liberal or conservative. Frankly, I do not know. I know that he is first, last and always a lawyer, a gentleman and industrious and has the courage to do his duty "as God gives him the light to see it".

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#### STATEMENT OF MAYNARD J. TOLL

My name is Maynard J. Toll. I have practiced law in Los Angeles for more than 40 years, and am one of the senior partners in the firm of O'Melveny & Myers of that city.

I am sure this committee would prefer that I avoid glittering generalities about Mr. Lewis A. Powell, and speak of specifics about which I have personal knowledge. This I shall do.

First, and of utmost importance, is the prime role he played in leading the lawyers of this country to take an affirmative position regarding the proposed Legal Services Program of the Office of Economic Opportunity, and to this accomplishment I will direct the bulk of my testimony. My qualification to speak authoritatively on this subject is that from the Fall of 1966 to the Fall of 1970, I was President, and for several preceding years had been Vice-President, of National Legal Aid and Defender Association, whose sole objective is to bring first class legal services to those who cannot afford a fee.

Shortly after the Economic Opportunity Act became law in 1964 it became apparent that the Act could be used to channel federal funds into the provision of legal services for the poor. At that time the legal aid program was limping along on an annual budget, nation-wide, of the order of magnitude of \$5 million. Here was the first hope for a massive infusion of new money, with a view to the immediate amelioration of the legal problems of thousands of people who previously were wholly without access to a lawyer.

Even more important was the promise that the interests of the poor as a total group would be competently and aggressively asserted for the first time before our courts and legislative bodies, leading to reforms which, over a period of time, might alter basically and drastically the status of the poor in our legal-economic-political system.

The proponents of these plans recognized that their successful implementation would be impossible if it encountered the opposition of the organized Bar of the nation. Given the generally conservative orientation of the Bar such opposition was a real possibility. Only the most optimistic dared hope for an affirmative endorsement by the legal profession as a whole.