

VI. POWELL AND THE RICHMOND ANNEXATION ISSUE

A common tactic supported by the white power structure in Virginia has been to annex areas to city areas, thereby diluting much of the Black voting strength. Recently, Richmond annexed part of the surrounding white suburbs. The net effect of this annexation was to decrease the Black population of Richmond from 55 percent down to 42 percent.

In *Holt v. Richmond* [U.S.D.C., ED. Va.], a suit was brought under Section 5 of the Voting Rights Act to 'de-annex' the suburbs. The suit was brought by a Black Richmond citizen as a class action on behalf of Richmond's Blacks. The Justice Department has disclosed documents which show that Powell urged Attorney General John Mitchell to reverse his ruling that Richmond's annexation of suburban areas violated Black voting rights (see the *Chicago Sun-Times*, October 30, 1971). Last August, Powell wrote a letter in an unofficial capacity—acting as an interested citizen—claiming that 43,000 suburban residents were being annexed to expand the city's tax base, not to dilute the voting power of the city's Blacks. The Justice Department, however, refused to withdraw its objection. It was held in a recent District Court opinion, that the primary purpose and effect of the annexation was to dilute the voting strength of the black citizens of the City of Richmond, a view in direct contradiction to Powell's.

Mr. Lewis Powell's lifestyle, his view of government as evidenced by his activities on the boards of education, his close association with a variety of corporate giants, his public conduct, his membership in the largest all white law firm in Richmond, his support of segregated social clubs, and his defense of the status quo, are inconsistent with the kind of jurist needed for the Court in the 1970's and '80's. These considerations take on more weight when one considers the tremendous problems which our country will be facing during those decades.

A different kind of troubling question is now being raised. One ought to closely examine the character of the nominee. One should inquire whether he has fully revealed the answers sought by the Committee. Without hastening to incorrectly interpret the answers given yesterday, it is hoped every Senator will give careful consideration to the matter of his nomination in its entirety, and to question whether the nominee has been completely candid in answering questions concerning his past.

The CHAIRMAN. All right. Have you got any questions?

Senator BAYH. Just one or two.

The CHAIRMAN. I am going to turn it over to you and when you get through we will recess until 10:30 tomorrow morning.

How long a statement do you have?

Mr. MARSH. About 5 minutes.

Senator BAYH. Shall I wait until Mr. Marsh is through?

Mr. MARSH. Thank you, Senator. I am here not only as assistant to Congressman Conyers but also as the official spokesman for the black attorneys of the State of Virginia, the Old Dominion Bar Association. We have filed our statement with the Senate Judiciary Committee, and this bar association went on record, consisting of all the black lawyers, 60 or 70 in the State of Virginia, as opposing both nominations.

Senator BAYH. Would you like to have this statement put in the record in full at this time?

Mr. MARSH. Yes, I would; in addition to a one-page supplement which I would like to have passed around.

Senator BAYH. Without objection it will be included in the record. (The statement follows:)

NOVEMBER 8, 1971.

STATEMENT OF THE OLD DOMINION BAR ASSOCIATION OF VIRGINIA BY WILLIAM A. SMITH, PRESIDENT AND HENRY L. MARSH, III, CHAIRMAN OF JUDICIAL APPOINTMENTS COMMITTEE

Gentlemen of the committee: the question posed by the nomination of Lewis F. Powell, Jr., is whether a man who has for much of his life waged war on the Constitution of the United States should be elevated to the Supreme Court.

At no time in the history of our nation has it been more necessary to carefully scrutinize the attitude and record of persons nominated for the Supreme Court.

We believe that the survival of our nation depends on the recognition and satisfaction of the aspirations of black and other minority citizens for equal opportunity and greater participation in America's promise and that this goal will not be achieved by packing the Supreme Court with men with proven records of hostility to the Equal Protection Clause of the Fourteenth Amendment.

Since Mr. Powell has had no judicial experience, he must be evaluated and judged on the basis of his record. Lewis Powell's record is spread in the pages of the law books containing the opinions of the federal courts at all levels and on the minute books of the boards on which he served. An examination of that record makes it clear that Mr. Powell is not qualified to serve on the Supreme Court because (1) he has consistently voted to resist or ignore the decisions of the Supreme Court requiring racial integration of public schools; (2) he has supported measures and schemes which frustrate compliance with the law; (3) he has permitted those subject to his policy to violate Title VII of the Civil Rights Act of 1964; and (4) he has practiced racial segregation and discrimination in his private and professional life.

During much of the past 20 years of his life, he has been continuously voting and acting to fight the implementation of the decision of the Supreme Court in the school cases in the State of Virginia. While calling for law and order in his public statements, he has repeatedly and consistently demonstrated by his public deeds a wanton disrespect for law which is rarely found in a nominee to the Supreme Court.

For convenience, Mr. Powell's record will be discussed under the following headings.

1. Service on the Richmond School Board
2. Position on the Gray Commission Proposal
3. Service on the State Board of Education
4. Directorship of corporations practicing illegal racial discrimination

SERVICE ON THE RICHMOND SCHOOL BOARD

Mr. Powell was a member of the Richmond Public School Board from 1950 until 1961, serving as its Chairman from July, 1952 until 1961.

In such capacity and in his service on the State Board of Education, he was required to subscribe the oath of office which states in part:

"I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Virginia . . ."

During the period subsequent to the *Brown* decisions, he consistently voted to resist attempts to seek compliance with those decisions.

The copy (attached as Exhibit "A") of the opinion of the Court in *Bradley v. School Board of City of Petersburg*, 317 F. 2d 429 (1963) demonstrated (1) the post-*Brown* conduct of the school board under Powell's leadership; (2) certain specific actions of the board which frustrated attempts to integrate the schools.

Position On The Gray Commission Proposal

Supporters of Mr. Powell have suggested that he deserves credit because he supported the Gray Commission Proposal. The attached summary of this proposal demonstrates its lawless nature.

The salient fact is that Powell supported the Gray Commission Proposal which contemplated and resulted in the expenditure by the State of Virginia of public funds to support private, racially segregated elementary and secondary schools in order to frustrate the implementation of the *Brown* decision. A summary of the Gray Proposal can be found in *Race Relations Law Reporter*, Volume 1, No. 1, pages 241-247 (1956). A copy of this Proposal is submitted as Exhibit "B".

SERVICE ON THE BOARD OF EDUCATION

While serving on the State Board of Education (1961-69), Powell consistently voted to frustrate the implementation of the *Brown* decision in Virginia. On July 1, 1964, he voted to pay retroactive tuition grants to the white parents of Prince Edward County in an obvious attempt to avoid the effect of federal court decisions forbidding payment of such grants. This action was subsequently enjoined by the federal court. See *Griffin v. Board of Supervisors of Price Edward County*, 339 F. 2d 486 (1964). 489, 490.

The *Griffin* opinion, enclosed herein as Exhibit "C" also contains a summary of other actions of the State Board of Education which reflected hostility to the *Brown* decision.

Because of the above stated reasons, the Old Dominion Bar Association urges this committee to recommend against the confirmation of Lewis F. Powell, Jr. We renew our previous request to be heard in opposition to this nomination.

Yours truly,

WILLIAM A. SMITH,
HENRY L. MARSH III.

NOVEMBER 9, 1971.

SUPPLEMENT TO THE STATEMENT OF NOVEMBER 8, 1971 BY THE OLD DOMINION BAR ASSOCIATION OF VIRGINIA TO THE SENATE JUDICIARY COMMITTEE

LEWIS POWELL'S DIRECTORSHIP OF PHILIP MORRIS, INC.

This Congress has recognized the importance of granting equal employment opportunity to blacks, women and other minorities by enacting Title VII of the Civil Rights Act of 1964. It is pertinent to inquire if a nominee to the Supreme Court has demonstrated in his record, a hostility to equal employment opportunity.

Lewis Powell became a Director of Philip Morris, Inc. in 1964. On 4 January 1968, a Federal Court in Virginia found that Philip Morris was guilty of discrimination against its black employees.

The Court, in the case of *Quarles v. Philip Morris, Inc.*, 279 F. Supp. 505 (4th Cir. 1968) held as follows:

"The court finds that the company's discrimination against Briggs and Mrs. Oatney is an intentional, unlawful employment practice. Relief under 706(g) [42 U.S.C. 2000e-5(g)] bringing their wage rates to \$2.55 per hour is appropriate."

* * * * *

"The court finds that the defendants have intentionally engaged in unlawful employment practices by discriminating on the ground of race against Quarles, and other Negroes similarly situated. This discrimination, embedded in seniority and transfer provisions of collective bargaining agreements, adversely affects the conditions of employment and opportunities for advancement of the class." 279 F. Supp. at 519.

A copy of the Quarles opinion is attached hereto as Exhibit D. [Filed with the Committee.]

As a Director of Philip Morris, Inc., Mr. Powell had a responsibility for the conduct of the Corporation. In view of the importance of the implementation of Title VII to the effort to achieve equal opportunity, this aspect of Mr. Powell's record falls short of the standard expected of a Justice of the Supreme Court.

Mr. CONYERS. Mr. Chairman, would you yield to me for the purpose of describing counsel a little more fully before the committee? I neglected to do that. He is the vice mayor of the city of Richmond, Va., serving his third consecutive term as a member of the city council. He is a member of the executive committee and former past chairman of the black elected officials of Virginia, a partner in the law firm of Hill, Tucker and Marsh of Richmond, Va.; a distinguished civil rights attorney in his own right who has served as counsel in nearly all of the civil rights cases that have arisen in the State of Virginia. He is chairman of the judicial appointments committee, and the spokesman for the Old Dominion Bar Association of Virginia. He has been a cooperating attorney with the NAACP legal defense fund, and a member of the NAACP national legal committee and various other professional organizations.

Mr. MARCH. Thank you, Congressman Conyers, and Senator Bayh. I am not going to repeat anything that has been said earlier. I do want to reiterate the points mentioned by Congressman Conyers, and dwell on four points. On the service on the Richmond School Board, Mr.