

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".

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.

Happily, Lewis Powell, President of the American Bar Association from 1964 to 1965, understood the need and had the vision and the courage to see and to seize the opportunity. Refusing squarely to follow the example of the medical profession, and refuting the alarmist argument that this would be socialization of the law, Mr. Powell exerted persuasively and effectively the great prestige of his office and achieved the support of both the Board of Governors and the House of Delegates of the American Bar Association for this new program.

The result was a tenfold increase in the quantity of legal services available to the poor, widespread participation in the program by lawyers throughout the country, active leadership in individual programs by scores of state and local bar associations, the observance of high professional and ethical standards in the interests of poor clients, and a quality of legal representation that is generally on a par with or better than that available to many paying clients.

All this could not have happened without the blessing of the American Bar Association. While Lewis Powell cannot be credited solely with the result, one must have very serious doubt that it could have been brought off without his aggressive leadership. It is beyond doubt that had he been in opposition the proposal would have failed.

During the four years of my presidency of National Legal Aid and Defender Association we had many occasions to express our corporate gratitude to Lewis Powell for what he had done, and I am pleased to bring that same witness to this honorable body today.

Secondly: At the same time that civil legal services were proliferating under the spur of OEO funds, the National Legal Aid and Defender Association was sponsoring a series of demonstration projects in the field of legal services for poor persons accused of crime. This so-called National Defender Project, financed by the Ford Foundation, attracted Mr. Powell's interest and enthusiasm, which assured full cooperation and participation by the American Bar Association. This Project has brought as significant help to poor people, although not as dramatic, as the OEO Legal Services Program.

Finally, I am sure others have testified, or will do so, regarding Lewis Powell's immeasurable contribution of talent, patience, wisdom and common sense to the American Bar Foundation. Of this important adjunct of the ABA he has been President for the past two years, during which I have had the privilege of serving as a director. In this role, time and again he has displayed these qualities, which will make him a great Justice of the United States Supreme Court.

STATEMENT OF PHIL C. NEAL, DEAN AND PROFESSOR OF LAW, THE UNIVERSITY OF CHICAGO LAW SCHOOL

My name is Phil C. Neal. I am Dean of the Law School of the University of Chicago, and I have been a law teacher for approximately 22 years, first at Stanford Law School and for the past ten years at the University of Chicago. My principal fields of interest during this period have been Constitutional Law, Administrative Law, and Antitrust Law. I am one of a group of law teachers working on a history of the Supreme Court commissioned by Congress under the bequest of Mr. Justice Holmes and being carried out under the general editorship of Professor Paul A. Freund of Harvard University. Perhaps it may be relevant to add that my special interest in the Supreme Court, and probably the views I hold as to the role of the Court and the standards its members should meet, owes a good deal to my experience in the 1943 and 1944 Terms of the Court in which I had the good fortune to serve as law clerk to the late Justice Robert H. Jackson.

I am grateful for the opportunity to appear before the Committee today in support of the nomination of Mr. Lewis F. Powell, Jr., to be an Associate Justice of the Court.

I am sure the Committee is fully informed from other and better sources as to the details of Mr. Powell's professional accomplishments, his public service, and his role as a leader of the organized legal profession. I should like only to add a few words in the nature of a personal appraisal, based on the particular relationship in which I have had the privilege of knowing him.

My association with Mr. Powell has been through the work of the American Bar Foundation. The Bar Foundation is a research organization, devoted to improving the understanding and workings of our legal system through scholarly investigation and publication. When it was established by the American Bar Association, the Foundation was located at the American Bar Center on the