

Whereas, Mr. Powell's record of leadership in the legal profession, exemplified by his distinguished service as President of the American Bar Association in 1964-65, President of the American College of Trial Lawyers in 1969-70 and President of the American Bar Foundation in 1969-71, and his outstanding contributions to the welfare of his community, state and nation in many and varied fields, including service on the National Commission on Law Enforcement and the Administration of Justice, on the Blue Ribbon Defense Panel, on the Virginia Constitutional Revision Commission and as Chairman of the Richmond City and President of the Virginia State Boards of Education, amply demonstrate his knowledge of the law and his dedication to the cause of justice, the maturity of his judgment, the breadth of his experience and the esteem in which he is held by all who know him; and

Whereas, Mr. Powell's most excellent character, simple humanity and unassuming modesty have remained unaffected by the high honors accorded him; and

Whereas, in 1969, the Bar Association of the City of Richmond unanimously recommended the appointment of Mr. Powell to the Supreme Court of the United States; now, therefore, be it

*Resolved*, That the Bar Association of the City of Richmond, by and through its Executive Committee, unanimously endorses and supports the President's nomination of Lewis F. Powell, Jr. to the Supreme Court of the United States and strongly urges his confirmation by the United States Senate; and be it further

*Resolved*, That a copy of this resolution be forwarded to the Chairman of the Committee on the Judiciary of the United States Senate, to the Attorney General of the United States, and to the two United States Senators from Virginia.

Given under my hand this 28th day of October, 1971.

[SEAL]

Attest:

RICHARD MOORE, JR., *President.*

HUNTER W. MARTIN, *Secretary.*

Senator SPONG. Lastly, I should like to thank you for your courtesy in allowing Senator Byrd and me to appear early this morning in order that we may attend the funeral of Senator Robertson. Thank you.

Senator BYRD. Mr. Chairman, may I say I have some inserts for the record, too.

The CHAIRMAN. They will be received.

(The material referred to follows:)

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[From the Richmond Times-Dispatch]

(1)

#### A BRILLIANT NOMINATION

In nominating Lewis F. Powell Jr. of Richmond for one of the two vacant seats on the U.S. Supreme Court, President Nixon has made a brilliant choice. No man in the country is better qualified—temperamentally, intellectually and professionally—to serve on the nation's highest bench.

Lewis Powell is an outstanding American, a man of reason, compassion and conscience. Time after time, he has demonstrated deep devotion to his city, his state, his nation and his profession. In crisis after crisis, his wise counsel has served as a beacon to guide men of goodwill to constructive solutions to difficult problems.

A review of Mr. Powell's distinguished civic career confirms his intense desire to serve his fellow man. As chairman of the Richmond School Board and president of the State Board of Education he contributed immeasurably to the advancement of public education in the city and in the state. As a member of the President's Crime Commission in 1967, he offered eminently constructive views on the causes and cures of one of the nation's most perplexing domestic problems. As a member of the President's Blue Ribbon Defense Panel, which submitted its report last year, he participated in a brilliant analysis of this nation's military problems and of its defense needs. As chairman of the Richmond Charter Commission in 1948, he helped prepare the framework of the council-manager form of government under which the city has progressed. In other ways, too—by serving on boards and commissions and by supporting numerous civic causes—Mr. Powell has contributed his knowledge and talents to society.

Professionally, Mr. Powell has attained impressive heights. He has served as president of the Richmond Bar Association, president of the American Bar Association and president of the American College of Trial Lawyers. Clearly, he commands the respect of his professional colleagues throughout the nation, a fact that underscores the wisdom of Mr. Nixon's decision.

A quiet and modest man, Mr. Powell has profound respect for the Constitution. He has profound respect also for the Supreme Court, believing that its decisions must stand as the law of the land until and unless they are changed by constitutional processes. His views on law and order reveal an abhorrence of extreme permissiveness and a belief that victims of crime and violence deserve far more consideration than courts have given them in recent years. For example, a supplementary statement which Mr. Powell and three others submitted in the crime commission's report noted that:

"We are passing through a phase in our history of understandable, yet unprecedented, concern with the rights of accused persons. This has been welcomed as long overdue in many areas. But the time has come for the rights of citizens to be free from criminal molestation of their persons and property. In many respects, the victims of crime have been the forgotten men in our society—inadequately protected, generally uncompensated, and the object of relatively little attention by the public at large."

That the Senate would find anything in Mr. Powell's record to justify his rejection for the Supreme Court is unthinkable. Senators, legal scholars and others have called upon Mr. Nixon to submit the names of qualified nominees. Lewis Powell is a man of excellence, and the Senate should have no trouble confirming him.

Mr. Nixon's second nominee, William H. Rehnquist, also appears to have the necessary qualifications to serve on the court. But his career and background are less familiar than Mr. Powell's and therefore require more extensive evaluation.

It is now the Senate's duty to act promptly and fairly on Mr. Nixon's nominees so that the court can be restored to full strength and begin to function normally.

[Editorial from the Richmond News Leader, October 22, 1971]

(2)

## MR. JUSTICE POWELL

In the "Republic" Plato said, "States are as the men are; they grow out of human characters." So they do. Yet during the past few decades there has been a deepening feeling on the part of the public that this beloved nation—this state—suffers from a paucity of men possessing the sorts of character from which the state could draw strength. Today the American people should be proud of their President. Last night he spoke to their despairing sensitivities, and allayed them. He nominated Lewis Powell for a seat on the Supreme Court.

Many who know him have long believed that somewhere in his future there ought to be a judgeship for Lewis Powell. Indeed, many have flirted with the vagrant notion that if there were no place for him among the nine regular seats on the Supreme Court, an extra seat ought to be created for him. He is that qualified. But in recent years those sentiments have been put aside as forlorn dreams: At 64, the reasoning went, he is too old.

Such a deposition might be cited with a good deal of veracity in making a case against the pettifoggers in the legal profession, but not against Lewis Powell. Today's news columns are full of his achievements. He possesses an eminent record of distinguished public and professional service—a record of honor and excellence. His mammoth intellectual capacity has expanded with every passing year. We intend to hyperbole: No man could better serve this nation or the Court than Lewis Powell. As President Nixon said, "Ten years of him (on the Court would be) worth 30 years of most."

How does one describe him? One searches for the proper adjectives. Reflective, yes. Scholarly, yes. Judicious, certainly. Incisive. Quiet. Kind. A man about whom, in Emerson's phrase, there is "a certain toleration, a letting be and a letting do, a consideration and allowance for the faults of others, but a severity to his own." Yet the best word, the most apt, is careful. He regards the law, perhaps, as the ultimate result of human wisdom acting from human experience for the benefit of the public. And he has the ideal temperament for applying the law. He has zest. He has a frank, unfrittering aplomb which never is too shy to ask questions, to probe, sniff, peek under, look behind, and get at what is there. His personal tastes are strong, but they are not so subjective that they preempt prudent analysis.

The character of the citizen is the strength of the state. As that is true, so it is true that the Supreme Court requires strength of character. Lewis Powell, a careful and utterly honest man, is strong character personified. He has held more posts of honor than lesser men can count. He is a Virginian in the grand tradition, and that says it all. That says it with the full amount of pride that he and his nation are due. How absolutely fitting it is that in his seventh decade he should be nominated to ascend to the highest court in the land to take the title of Mr. Justice Powell.

[From the Washington Daily News, Oct. 22, 1971]

(3)

## NEW CHOICES FOR THE COURT

On the basis of their public records, and in the light of their judicial and intellectual qualifications, President Nixon has selected two men for the Supreme Court perfectly in line with the type of justices he promised in his 1968 campaign.

Lewis F. Powell Jr. of Richmond is nationally known as a legal scholar and is a former president of the American Bar Association, a fact testifying to the esteem he has gained among lawyers.

William H. Rehnquist of Arizona is an assistant U.S. attorney general who once was law clerk to the late Justice Robert H. Jackson.

As the President said, both of these men have distinguished themselves in their profession, beginning in their student days. Mr. Rehnquist is a specialist in constitutional law and Mr. Powell has been a teacher as well as a practitioner.

Neither has had judicial experience, which is desirable, but otherwise they appear to have all of the attributes and legal competence necessary to fill the positions left vacant by two of the Supreme Court's giants—Justices John M. Harlan and the late Hugo L. Black.

Mr. Nixon described each as "conservative" in his judicial philosophy and that looks to be accurate. In the sense Mr. Nixon used the term, it means sticking to the Constitution and the law, which is what judges are supposed to do.

It always is possible, of course, for those so minded to find in any man's background a nit which can be blown up to ogre-size. Past civil rights activity, if any, seems to be a favorite hunting field.

Mr. Powell was chairman of the Richmond Public School Board when Negro students calmly were admitted to white schools. No nit harvest is apparent there. And none is apparent in Mr. Rehnquist's record.

Mr. Powell, at 64, may be a trifle old to be starting a new career, But Justice William O. Douglas is still there at 73.

In any event, the President seems to have chosen well for these major positions—quite well. And unless the Senate Judiciary Committee can find more than overgrown nits, Mr. Powell and Mr. Rehnquist should be promptly confirmed—so a full bench can get on with the court's heavy load.

What we don't understand about all this, tho, is why Mr. Nixon was so busy playing games before he was ready with his final decisions. All those names of "possibles" for the court didn't get into the papers because some Washington reporters were having nightmares—they deliberately were leaked by the administration.

And if the President sent two of the names to the bar committee to have them rejected, the only net of that is embarrassment all around. If any of this was necessary, the reason escapes us. Maybe Mr. Nixon eventually will explain it in his memoirs or somewhere.

But no decoys were necessary to enhance the caliber of Mr. Powell and Mr. Rehnquist.

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[WRVA Radio, Editorial Opinion, broadcast, Oct. 22, 1971]

(4)

#### MR. JUSTICE POWELL

President Nixon has nominated Richmonder Lewis F. Powell, Jr., to the United States Supreme Court. We don't think the President's judgment could have been better.

Lewis Powell has added stature to his state, his city, and his profession. His presence will add stature to the Supreme Court. To be named to the Supreme Court is a high honor, to serve on the Supreme Court is a sacred duty. We believe it is an honor he well deserves and a duty he will scrupulously fulfill.

Mr. Justice Powell . . . it has a nice sound to it.

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[From the Ledger-Star, Oct. 22, 1971]

(5)

#### EXCELLENCE FOR THE COURT

President Nixon's latest surprise for the country has brought much prompt, favorable reaction and carries highly constructive implications.

Suffolk-born Lewis F. Powell, one of Virginia's most eminent legal minds, who was announced last night as a Presidential nominee for one of the two vacancies on the U.S. Supreme Court is clearly an excellent choice—"fantastically good," Virginia's Republican Governor, Linwood Holton, called it. And the brilliant young assistant attorney general, William H. Rehnquist, though he is not so well known as Mr. Powell, is being described by those who are familiar with his Constitutional expertise as another fine selection by the President for the high court.

The unexpected aspect of these nominations lay in the fact that as late as yesterday, a field of six—not including Messrs. Powell and Rehnquist—was believed to contain the chief prospects, though the reported top candidates (a California woman judge and an Arkansas attorney) had just been found not qualified by an American Bar Association review committee, according to a Washington newspaper story.

In his turn away from the somewhat pedestrian possibilities on that list of six, the President came through with a remarkable display of ultimate good judgment. Unfortunately, the same can't be said of the White House decision, also announced yesterday, to abandon—because of displeasure over the leaking of names and

actions—the system for getting advance ABA appraisals on court candidates. This would seem to be still a quite useful way to screen out all but those of the highest caliber.

At any rate, the Powell and Rehnquist nominations, with their reach into the area of high legal scholarship, transcend the false starts, rumors and wrangling since the step-down (and then death) of Justice Hugo Black and the resignation of Justice John M. Harlan. And in his selections, Mr. Nixon has managed to incorporate some of his chief announced objectives, while not yielding to the temptation to try to do too much at once—such as acceding to demands for a female appointment or an ethnic one.

Mr. Powell has been prominent in Richmond's and Virginia's educational affairs, as well as in his profession, which carried him to a role of national importance as president of the ABA. So he is the Southerner of national distinction whom Mr. Nixon wanted. This is the aspect which is likely to get searching attention from those predisposed to criticism, but the nominee's moderation in racial matters, his reputation for compassion and, above all, for fairness will make him a difficult target.

Also, both Mr. Powell and Mr. Rehnquist possess the conservative judicial outlook Mr. Nixon sought. Mr. Powell's aversion to excess court activism is well documented, and the Rehnquist respect for the law as it is ("The law can turn him around on an issue," an aide commented) already comes through as a dominant characteristic.

Virginia, for its part, can take great pride in its share of the double court nomination. And the President as well as the country should find long-term satisfaction in the basic White House decision to make legal excellence an overriding consideration in the quest for two new Justices.

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[From the Richmond Times-Dispatch, Oct. 23, 1971]

(6)

POWELL: 1 OF 100

In the entire history of the United States, only 98 persons have served on the nation's highest judicial body. If the nominations of Lewis F. Powell Jr. and William H. Rehnquist are confirmed by the Senate, it will bring to an even 100 the number of Americans who have held the coveted title of justice of the U.S. Supreme Court.

And yesterday, only hours after President Nixon's dramatic and surprise announcement of his selections, confirmation was being widely predicted.

Reaction to the nominations was almost, but not quite, universally favorable. It was to be expected that persons generally viewed as conservatives and as believers in a strict construction of the Constitution would hail the appointments; the question was: What would the liberals say?

For the most part, the liberals who commented endorsed the nominations, at least indirectly, by emphasizing how much better qualified they consider Powell and Rehnquist are than the two persons who were widely expected to get the nod, Herchel H. Friday of Arkansas and Mildred L. Lillie of California.

The New York Times, not noted for political conservatism, said that "Mr. Powell admirably combines the fundamental requirements of legal and intellectual distinction with Mr. Nixon's insistence on political conservatism and Southern origin." The paper was not quite as favorably inclined toward Mr. Rehnquist; it said he has a "brilliant professional background but a questionable record on civil rights."

But it would be too much to ask that George Meany adopt an agreeable attitude in a situation of this kind. The President of the AFL-CIO gave forth with the solemn observation: "On the face of it, these appointments seem to be part and parcel of the administration's effort to pack the court with ultra-conservatives who subscribe to the President's narrow views on human rights and civil rights . . ."

We're not intimately familiar with Mr. Rehnquist's record, but we do know Mr. Powell, and anyone who suggests that this distinguished Virginian is insensitive to human and civil rights is grossly ignorant on the subject. His long career of service, both in the law and in numerous civic and governmental undertakings, is filled with instances of demonstrated concern for protection of the people's rights and for meeting human needs, including the needs of persons of all races and of all economic levels.

Meanwhile, an Associated Press writer says that President Nixon was intent on naming Mr. Friday and Mrs. Lillie to the court until an adverse American Bar Association committee report on those two "forced a last-minute switch." Without reflecting on Mr. Friday and Mrs. Lillie, we do say that whatever circumstance led to the appointment of Mr. Powell, the Nation will richly benefit from it.

The only possible factor that could reasonably be said to be on the negative side in viewing Mr. Powell as a Supreme Court nominee is his age, 64. Both Gov. Linwood Holton and Virginia's U.S. Sen. Harry Byrd said yesterday that the Nixon administration on several recent occasions had expressed some thought that younger nominees should be sought for court vacancies. But as we said in an editorial in this paper Oct. 5, in light of Mr. Powell's superb qualifications "the President could well decide that the age factor is outweighed by other considerations."

That is exactly what happened. Referring to the fact that some people had said that Mr. Powell is too old. Mr. Nixon declared: "Ten years of him is worth 30 of anyone else."

Time, we are confident, will prove the President right.

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[Editorial from Times-Herald, Newport News, Va., October 23, 1971]

(7)

#### EXCEPTIONAL NOMINATION

Now and then, in the passage of time, one comes across quiet men of indefinable stature, men stamped with an aura of ineffable brilliance, of a permeating competence that radiates a subtle capacity for leadership.

Such a man is Richmond's Lewis F. Powell, nominated by President Nixon, along with Arizona's William H. Rehnquist, to the current vacancies on the Supreme Court.

It was then, twenty years ago that the accomplished Richmond lawyer crossed our path, in the days when Prince Edward County and J. Lindsay Almond were steering an uncertain course through uncharted depths toward the Supreme Court decision of May 17, 1954. Powell had helped to write the new charter for the capital city, he was then on the Richmond School Board, as its chairman. It was here that he was to develop an abiding interest in education which was recognized by Governor Almond, who named him president of the Virginia State Board of Education during his eight years of service on that body. We remember Powell as a solid rock of reason against the swirling currents of emotion that clouded the various school-related issues that rose out of the Court's decision to overthrow the doctrine of "separate, but equal" rights for Negroes.

On every hand, his fellows immediately recognized his very special qualifications of leadership, and the passing years saw one after another responsibility handed him. The list is awesome: president of the American Bar Association, the College of Trial Lawyers, the American Bar Foundation. President Johnson named him to the President's Crime Commission. He and 16 others were named to a committee to establish minimum standards for the administration of criminal justice. Powell was a member of the President's Defense Commission, a student of our military needs.

But to Virginia, where his family has lived since the Revolution, these accolades were not surprising, for had he not led his class at Washington and Lee from his undergraduate days through to the time when he was awarded the doctorate?

Virginians know him, too, as a stout conservative dating from the days of the elder Byrd from Winchester.

Many were disappointed when Powell removed himself from consideration when the Haynesworth and Carswell nominations produced such bitter divisiveness in the Senate. These supporters felt Powell might well have restored some of the lustre to the tarnished image of the Court.

Certainly this towering judicial intellectual, truly a 20th Century Renaissance man of many parts, offers the Court a restoration of the classic function, which is a strict interpretation of the Constitution. Even in the dark days of 1954, when it seemed the Court was bent on destroying the social fabric of the nation (as subsequent events proved it very nearly has) Powell stood in Richmond quietly, adamantly telling his associates that the Court decision is in fact the law of this country until Congress and the states pursue the constitutionally-authorized processes for changing that law.

His judicial philosophy, weighed in light of recent Court permissiveness and the tendency to legislate instead of adjudicate, is contained best, we should think, in a discourse he made regarding civil disobedience shortly after stepping down from the presidency of the ABA:

"America needs to awaken to its peril" he said. "It needs to understand that our society and system can be destroyed . . . The rule of law in America is under unprecedented attack.

"There are, of course, other grave problems and other areas calling for determined and even generous action. The gap between prosperous middle classes and the genuinely underprivileged, both black and white, must be narrowed. Many mistakes have been made in the past, and there is enough blame for all to share. But we have passed the point where recrimination and bitterness will solve problems.

"We must come to grips realistically with the gravest domestic problem of this century. America has the resources, and our people have the compassion and the desire, to provide equal justice, adequate education and job opportunities for all. This, we surely must do.

"At the same time, we must avoid the mindless folly of appeasing and even rewarding the extremists who incite or participate in civil disobedience. There must be a clearer understanding that those who preach, practice and condone lawlessness are the enemies of social reform and of freedom itself. In short, the one indispensable prerequisite to all progress is an ordered society governed by the rule of law."

It is not surprising that Powell's name has surfaced before. It appeared here earlier this year, even as other strict constitutionalists cast about for candidates of monumental stature to help the Court regain its public acceptance. Then, to be honest, Powell's own wishes caused its withdrawal. More recently, the President's accent on youth seemed to except Powell, whose friends will never believe he is 64. His modesty, consummate grace and unfailing facility of manner mark him as one of those ageless men from whom his friends benefit immensely.

We have remarked upon Lewis F. Powell at length, for which we beg your forbearance. Of Mr. Rehnquist, perhaps more at a later time. After the hatchet-men of the liberal persuasion and the army of Democratic presidential candidates are through with him.

Meanwhile, the Senate should be moved to advise and consent to these nominations, for the President has very deftly disarmed his critics by offering two good names for approval.

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[From the Roanoke Times, Oct 23, 1971]

(8)

#### HOORAY FOR MR. POWELL AND MR. NIXON!

After a dismal parade of mediocre possibilities for the United States Supreme Court, President Nixon has refreshed the scene by nominating Lewis F. Powell, of Richmond, former president of the American Bar Association; and William F. Rehnquist, an Assistant Attorney General of the United States.

Mr. Powell's qualifications need not be reviewed here; they have been presented in detail in the news and interpretative columns. He will be an asset to the Supreme Court. The Senate may review Mr. Rehnquist's qualifications in more depth. The problem is whether, in making some presentations to the Congress, he fully agreed with the debatable views of his client, the Department of Justice, and the White House.

In the general state of euphoria produced by what is, as compared to what might have been, a kind word should be said for Attorney General John Mitchell, the chief searcher for Supreme Court prospects. Like St. Paul on the road to Damascus, he seems to have been struck by a vision—in this case the vision that there ought to be *quality* on the Supreme Court of the United States.

In the case of St. Paul, the conversion was long-lasting and beneficial. If Mr. Mitchell's conversion is similarly permanent and dynamic, he will be of great assistance to the President and to the nation. The Senate might well consider getting on with the confirmation process. The court needs to be at full strength.

[From the *Virginian-Pilot*, Oct. 23, 1971]

(9)

## GOOD CHOICES FOR THE COURT

If all's well that ends well, then the remarkable events that led to President Nixon's nomination of Lewis F. Powell, Jr. and William H. Rehnquist to the Supreme Court were in good order. Mr. Powell's fellow-Virginian, Representative Richard H. Poff, came off sadly bruised, it is true, and Hershel H. Friday of Arkansas and Mildred L. Lillie of California fell from obscurity to derision. The American Bar Association won a case and lost a client. But the overriding outcome of some puzzling Presidential politicking and some controversial lawyer-committee judging was to place before the Senate the names of two men who appear to be exceptionally equipped to fill the great voids left by the resignations of the late Justice Hugo Black and of Justice John M. Harlan.

Mr. Powell, indeed, should become what the Court now lacks: a giant. His professional success is well-documented; a member of a prestigious Richmond law firm, he has been president of the American Bar Association, the American College of Trial Lawyers, and the American Bar Foundation. Also, he has been publicly honored for his service to public education as Chairman of the Richmond School Board and a member of the State Board of Education. His race-affairs record, which a Southerner before the Senate must expect to be examined harshly, was built on good sense and good conscience; possibly Mr. Powell's outstanding contribution to Virginia was his leadership in the quiet sabotage by a business-industrial-professional group of Senator Byrd's Massive Resistance.

Mr. Nixon in announcing his choices for the Court linked them to his own persuasion that recent decisions there have weakened the peace forces against the criminal forces in society. That was an inadequate introduction to the Nation of Mr. Powell's judicial philosophy—and, no doubt, of Mr. Rehnquist's as well. Mr. Powell was president of the A.B.A. in the period when individual rights were being reinforced by a series of landmark criminal-case decisions, and more than once indicated personal dissent. As a member of the Katzenbach Commission on Law Enforcement and Administration of Justice, he joined several colleagues in expressing "Additional Views" concerned with "whether the scales have tilted in favor of the accused and against law enforcement and the public further than the best interest of the country permits." But consistently Mr. Powell has insisted that "it is fundamental to our concept of the Constitution that these basic rights [spelled out in the Bill of Rights] shall be protected whether or not this sometimes results in the acquittal of the guilty." Balance has been his objective. Fairness has been his creed. Scholarship has been his guide.

This facet of Mr. Powell's thinking inevitably will be explored out of a suspicion that Mr. Nixon, having lost to Senate inquiry and general outrage at least three Southern strict-constructionist prospects for the Court, has come up with a polite but hardnose law'n'order ascetic. Mr. Rehnquist's connection, as Assistant Attorney General, with the Nixon Administration's tough police legislation may further the illusion.

Mr. Powell of course would have been on the Harlan and not the Douglas side in *Escobedo* and *Miranda*. But any attempt to identify him with one segment of the Court's business would be to over-look the range of his experiences, his expertise, and his wisdom. Whatever issue that Mr. Powell as a Supreme Court Justice might consider, one may be certain, would be judged by him on its merits and the applicable law. Mr. Rehnquist, from what we can gather, similarly is a case man rather than a doctrinaire.

Both nominees, in any event, have distinguished themselves as students, as lawyers, and as public figures. The unusual circumstances of their selection—without White House consultation with the A.B.A., whose judiciary committee had rejected a slate of candidates—should not obscure Mr. Powell's proven greatness and the younger Mr. Rehnquist's foundation for attainment.



[Editorial from the Daily Press, Newport News, Va., October 23, 1971]

(10)

## SUMMONED TO SERVE

When President Nixon, early in his administration, was pondering choices to fill Supreme Court vacancies, the name of distinguished Richmond attorney Lewis F. Powell Jr. was on his list of prospects; that he was passed over then could not have been because of any lack of merit. The chief executive's thoughts were directed toward elevating of men already serving at the intermediate level of the federal courts structure.

When two additional opportunities developed a few weeks ago, for the President to restore balance to the Supreme Court, he centered his selection process on men below the age of 60, on the basis that while maturity of judgment is all-important, younger men of his choosing would presumably have more years in which to serve the nation in accordance with the strict constructionist philosophy.

So it seemed that Mr. Powell, despite his outstanding credentials, would again be shunted aside, and particularly so when the names of six men and women were submitted to an American Bar Association whose stature would not equal the vastly respected Virginian.

So it was a great surprise to the nation when Mr. Powell was singled out as one of two nominees, though the ABA group's rejection of the administration's entire list of prospects left open the possibility that the President would turn to others to prevent a long and bitter confirmation battle in the Senate. But seldom has a bolt from the blue been of more obviously beneficial effect, and while the ABA committee angered the President by its refusing to endorse any of his original choices, this evolved into an indisputable boon for the American people. Everything in Mr. Powell's career as a lawyer and in a wide range of public service points to his being a truly brilliant choice.

As for the age factor, Mr. Powell keeps himself in superb physical condition, much more so than many a much younger man, and, as Mr. Nixon commented, he can provide more service to the country on the Supreme Court in 10 years than others might in 30.

The second nominee offered by Mr. Nixon, Assistant Attorney General William F. Rehnquist, is, like Mr. Powell, a judicial conservative. Among his responsibilities in government has been that of looking into the legality and constitutionality of all constitutional law questions in the executive branch. He is not so well known on the legal scene as Lewis Powell, a former president of the ABA; indeed it has been less than three years since he was a relatively obscure Phoenix lawyer. But he has gained much favorable attention as an outstanding legal scholar since then. We are obviously not as conversant with his capabilities and record as with those of Mr. Powell, but Assistant Attorney General Rehnquist looks to be of much superior calibre to any of the six previously mentioned. This appears also to be the overwhelming view in the Senate, where confirmation of both nominations looks like a certainty without the bitter wrangle into which the president for a time seemed to be headed.

[From the Lynchburg News, Lynchburg, Va., October 24, 1971]

(11)

## MR. NIXON NOMINATES POWELL, REHNQUIST

Judicial conservatives will be heartened by President Nixon's nomination of Lewis F. Powell Jr. of Richmond and William H. Rehnquist of Milwaukee and Phoenix for the U.S. Supreme Court. Both have rated the "strict constructionist" views that Mr. Nixon has insisted upon in his Supreme Court appointees.

One must bear in mind that a judicial conservative is not, ipso facto, a political conservative—although this would seem to be the case with these two lawyers. The late Justice Hugo L. Black was a strict constructionist on the Bill of Rights—although a political and judicial liberal on other Constitution issues.

Mr. Powell's record is by far the more impressive, but then he is 64 while Mr. Rehnquist is but 47. A native of Suffolk, graduate of Washington and Lee University and law school, Mr. Powell is a former president of the American Bar Association. Of equal importance in regard to his qualifications is his service on the Richmond and Virginia school boards where he demonstrated a profound concern

for public education and took a moderate stand on racial matters. This experience should prove invaluable on the Court, mired in the muck of its recent rulings disrupting the educational process.

His public statements on law and order and justice are especially reassuring:

"The key problem is one of balance," he has said. "While the safeguards of a fair trial must surely be preserved, the right of society in general and of each individual in particular to be protected from crime must never be subordinated to others' rights."

Mr. Powell also rendered his country an invaluable service in 1970 when he and six other members of the President's Blue Ribbon Defense Panel issued a supplementary report warning of the growing Soviet nuclear menace.

Entitled "The Shifting Balance of Military Power," the reports warned that "It is not too much to say that in the 70s neither the vital interests of the U.S. nor the lives and freedom of its citizens will be secure . . ."

The report concluded that unless the U.S. acts to redress the imbalance it ". . . will become a 'second rate' power subordinate to manifest Soviet military superiority. In that case, the world order of the future will bear a Soviet trademark, with all peoples upon whom it is imprinted suffering Communist repressions."

Over the years this newspaper has had occasion to comment enthusiastically upon statements made by Mr. Powell—most of them addressed to the subject of the rule of law instead of the rule of men.

We are not as familiar with Mr. Rehnquist's public record, but some of his statements quoted in the first press reports of the nominations are gratifying, indeed. He has attacked radical protestors as the "new barbarians," and noted that "our freedom exists by reason of the law's guarantee that others must respect it." As does Mr. Powell, he appears to take the view that rights impose responsibilities—of which the first is to maintain those rights for all others.

As the President noted, their responsibility as justices of the nation's highest court will not be to him, or to any political creed, but to the Constitution. That document, of course, embodies a very definite political philosophy: it emphasizes individual rights and responsibilities and is based upon the premise that all rights derive from the people, that government exists only upon the consent of the governed.

We would like to add a footnote: It is reassuring, also, that Mr. Nixon has decided to end the policy of seeking the approval of the American Bar Association before nominating justices to the Supreme Court. The Constitution impowers this responsibility upon the President, with the consent of the Senate. Any delegation of this responsibility, of this authority, to a private professional organization, no matter how well qualified, is a clear violation of the Constitution. It would be wise to seek the views of the ABA, as the views of other organizations and individuals, but only for guidance. No one should be given what amounts to a power of veto. Supreme Court justices cannot be creatures of the ABA, any more than creatures of the President or the Senate. They must be their own men, whose only allegiance is to the Constitution. To the degree that it is, to that degree will the people prosper.

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[Editorial from the Sunday Star, Washington, D.C., Oct. 24, 1971]

(12)

### THOSE SURPRISING SUPREME COURT NOMINATIONS

To the astonishment of almost everyone, including the American Bar Association's judiciary committee, President Nixon has named to the Supreme Court Lewis F. Powell, Jr., of Virginia, and William H. Rehnquist, of Arizona. On the basis of the facts as presently known, both men are eminently qualified.

Early speculation had centered on Representative Richard H. Poff, a 10-term Republican from Roanoke who had sought nomination for a number of years. The Virginian was actively opposed by some civil rights and labor leaders and his opponents pointed out that he did not come close to meeting the high professional standards for the judiciary which he had urged Congress to write into law; Poff withdrew as the ABA's judiciary committee was about to consider his qualifications.

Mr. Nixon next sent to the committee, chaired by Lawrence E. Walsh, the names of six candidates, with instructions to concentrate its scrutiny on two

of them, California Judge Mildred L. Lillie and Arkansas bond attorney Herschel H. Friday.

When the ABA committee refused to recommend either Friday or Mrs. Lillie—and the results of their deliberations became public.—Mr. Nixon by-passed the committee and went on nationwide television Thursday night to announce his nominations of Powell and Rehnquist.

This is neither the time nor the place for a discussion of Friday's or Mrs. Lillie's legal credentials. Suffice it to say that the procedure of submitting the names of nominees to the ABA's committee in advance, agreed to last summer by Attorney General Mitchell, proved a poor way to establish a candidate's qualifications, inflicting unnecessary embarrassment and professional damage on both Friday and Mrs. Lillie, not to speak of the other four candidates.

There is, of course, no constitutional provision for the ABA to rule on any judge's qualifications. The responsibility for an appointment to the Supreme Court rests with the President and cannot be shared with any other body. Certainly the President has the right, perhaps the obligation, to seek and possibly act upon the advice of distinguished attorneys in such matters. But in view of the leaks in the "confidential" deliberations of the committee, we feel the President was right to instruct the attorney general to terminate the ill-starred experiment.

In naming the 64-year-old Powell to the court, Mr. Nixon is fulfilling his frequently restated vow to place a Southerner there, a matter of particular urgency with the retirement and death of Hugo L. Black.

The shy and courtly Richmond attorney, who reportedly turned down nomination for the seat presently held by Associate Justice Harry A. Blackmun, has ample intellectual and professional credentials: Phi Beta Kappa, first in his law class at Washington and Lee, a master's degree from Harvard, former president of the ABA (1964-65), of the American College of Trial Lawyers (1969) and of the American Bar Foundation (1969-71).

As chairman of Richmond's school board in the emotion-charged years from 1952-61, Powell, who is a Democrat, charted a moderate and reasoned course in desegregating the schools of the capital of the Old Confederacy. As 88th president of the ABA, he played a key role in bringing that body behind President Johnson's program of federal support for legal aid to the poor.

On law-and-order matters, he appears to be hard-nosed and, in our view, this is no bad thing. While he has supported the right of every accused person to a fair trial, he has placed great stress on "the rights of citizens to be free of criminal molestation" in an age which he has described as one "of excessive tolerance," to all of which we say amen. His experience in corporate law will be a real asset to the court.

Rehnquist, at 47, is too young to have achieved the national reputation which Powell enjoys within the legal fraternity. But his academic reputation is the equal of the older man's. Born in Milwaukee, he picked up his Phi Beta Kappa key at Stanford, where he also finished first in his law school class.

In 1952 he came to the Supreme Court to clerk for the late Associate Justice Robert H. Jackson. A Goldwater Republican, Rehnquist practiced law in Phoenix before joining the Justice Department in 1969 as assistant attorney general in charge of the Office of Legal Counsel, a post described by the President Thursday as making him "the President's lawyer's lawyer," or legal father-confessor to Mitchell.

Because he had the good fortune to be born in Wisconsin, educated in California and employed in Arizona—and has never held elective office—it is unlikely that any racist skeletons will be discovered in Rehnquist's closet. But he has been the legal architect of many of Mitchell's most controversial policies, including those dealing with police surveillance, the handling of anti-war demonstrations and the general toughening of criminal procedures. He is, in fact, a conservative theoretician who is bound to draw some flak from Senate liberals.

But while Rehnquist's record as an assistant attorney general is legitimate fuel for those who would light fires of opposition to him, that record is no sure indication of how Rehnquist might vote on the court when he is his own man. And his intellectual qualities and youth surely promise at least the possibility of development into a great jurist.

The initial reaction to Powell and Rehnquist, both on the Hill and elsewhere, has ranged from cautiously favorable to enthusiastic. This, of course, will not last. It is reasonably safe to predict that both civil rights activists and elements of organized labor will oppose Powell. Civil libertarians will try to make things hot for Rehnquist. In the hell hath no fury department, Women's Lib will be after both nominees.

As has been indicated, the academic credentials of both men seem excellent. As to their professional qualifications, the only valid criticism that could be made of either is that neither has any experience on the bench. Nor did seven of the 12 Supreme Court justices recently rated as "great" by a panel of 65 academic experts examining the records of 96 of the 98 men who have served on the court. In any case, Mr. Nixon's two previous appointments, of Chief Justice Warren Burger and Blackmun, went to sitting judges.

The latitude which the Senate should have in granting or refusing confirmation on political grounds is subject to dispute. Clearly, the President does not and should not have the same total freedom to name justices as he does cabinet members. The latter, in historical terms, are for but a day and serve at the pleasure of the President. The former, once they are confirmed, are on the Supreme Court for life and are expected to function as members of an independent, coordinate branch of government. Justices are not, in short, the President's men; they are and ought to be their own men, owing allegiance only to the Constitution, the nation and their consciences.

Nevertheless, when a President nominates men whose intellectual and professional qualifications are clear, men who are free of the taint of corruption and whose political views cannot be characterized as being of either the extreme right or the extreme left, then a strong presumption operates in favor of the President's nominees. It is, in short, up to the Senate to demonstrate that the nominees are morally or intellectually unsuitable. It is not up to the President to prove that there is no finer jurist in the land.

We do not have at our disposal at this time sufficient information to give our full and unqualified endorsement to either Powell or Rehnquist and we will return to the subject as the Senate debate develops. But on the basis of what is known at this point, both men would seem worthy to sit on the Supreme Court. The President did well to name them and the Senate ought to approach the debate on their confirmation with a largeness of spirit and lack of political rancor worthy of the upper house. We believe it will.

[From the Progress-Index, Petersburg, Va., October 25, 1971]

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#### TWO ADMIRABLE NOMINATIONS

Not long ago we wrote something here, in comment on speculation over names suggested for the Supreme Court, about the difference between notoriety in the sense of being widely known and distinction in the sense of eminence of achievement.

It was suggested by comments to the effect that the President in making nominations to the Supreme Court should seek out persons who are widely known; as if that were the test of fitness and proof of qualifications. Notoriety can be good or bad, while distinction can exist without taking the form of notoriety.

In making his two nominations to the Supreme Court, President Nixon has honored the difference which we were discussing and has applied the criterion which impresses us as more important for the purpose. To be sure, there is nothing obscure about Lewis F. Powell, Jr., Richmond lawyer and former president of the American Bar Association, and William H. Rehnquist, an assistant attorney general. Yet neither bears a name which evokes instant recognition of some kind or other throughout the land while both have credentials which are readily apparent.

From law school days to the present the two exhibit evidences of the word "excellence" which now so often is bandied about, sometimes in usage which makes for wonder whether the user has any idea what "excellence" ever means.

Although the generalizations apply to both nominees, it is the nomination of Mr. Powell which gives especial satisfaction in this part of the country. His name has not gone unmentioned in the speculation—a few weeks ago a national news weekly published his picture among others—but it has not been juggled in the line-ups like the name of a horse in an approaching race. Indeed one might have suspected that the lack of a political background would disqualify him from anything more than respectful mention.

That it was not so is cause for rejoicing. He is a successful lawyer, a legal scholar, and a leader in organizations of his profession. Beyond that, he is a person of broad and philosophical interests and a man who has given important service to public causes.

Mr. Powell is described as a judicial conservative. Probably "conservative" should be applied as a general adjective, but our impression is that, like quite a few conservatives, he is more given to studying problems on their merits than in applying readymade opinions found hanging on a party line.

The President's comment that Mr. Powell is not just a Virginian strikes us as supererogatory. We suppose it may be in order to view of the rampant and often so unnecessary sectionalism which flourishes in the country today, owing largely to the fanning of its fires by irresponsible politicians.

The recent and heavy-handed criticism of the President that he was seeking to downgrade the Supreme Court, indeed to the extent of trying to undermine the form of government, is absurd and unjust in light of the two nominations which he has made. Plainly he is hoping to improve the quality of the Supreme Court, not plotting to subvert it.

Awaited with interest is how the established opponents of his nominations will treat the two which have just been made. They may be sharpening their knives, getting the tar and feathers ready, or putting up the gallows.

But it is awfully hard to see how they could go into that act this time.

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[From the Daily News-Record, Harrisonburg, Va., October 25, 1971]

(14)

#### AN EXCELLENT CHOICE

President Nixon's announcement Thursday night that he was nominating Lewis F. Powell Jr. of Richmond to the Supreme Court of the United States is most welcomed news. We cannot think of a more able person to sit on the highest court of the land.

Mr. Powell, a native of Suffolk, was admitted to the Virginia Bar in 1931 after cramming three years of law school at Washington and Lee into two. He was president of the Richmond Bar Association in 1947-48 and in 1964 served as president of the American Bar Association, one of the highest distinctions an attorney can receive.

Mr. Powell, no opponent of change but one who calls for it within orderly process, contributed greatly to legal aid for the poor while ABA president. In comments on sweeping court decisions protecting the rights of the accused, he has reminded legal theorists that, while rights of the accused are important, society must protect the rights of victims of crime too.

His term as head of the American Bar Association came at a time of much civil unrest. He was a Southerner and ordinarily might have been the target for those charging prejudice at every turn. Yet his quiet but effective approach disarmed would-be critics, and his leadership was hailed nationally.

We are confident the Senate will confirm this excellent appointment. We only hope it will be accomplished in short order without emotionalism because he is a Southerner. Certainly his record deserves this.

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[A clipping from VPA News-Clip Bureau, Richmond, Va., in the World-News, Roanoke, Va., October 23, 1971]

(15)

#### CURTAIN ON CONFOUNDING COURT ISSUE?

The Nixon Administration—after a series of tumbles, feints, back flips and handstands—has managed to land upright in its Supreme Court nominations.

The agony and ecstasy that the administration has put the nation through the past several weeks (partly of its own doing, partly through the new system of checking out prospective court members) makes the period one of the most confusing in Supreme Court history.

But in view of some of the recent possibilities mentioned by the administration and hinted by Members of Congress, the choice of Lewis Powell, a Virginian and past president of the American Bar Association, and Assistant Attorney-General William Rehnquist must rank high.

Both men are respected in legal circles, both are known for their careful presentations before the bar's bench and congressional committee and both are thoroughly at home with constitutional questions.

Both men fit the President's notion of conservatives, though neither is the kind of doctrinaire footnote-flogger who is likely to incur the wrath of the coalition that formed about the nominations of Harrold Carswell and Judge Haynsworth.

Because both men appear to be well qualified for the high court, there is a sense of relief, a feeling that now, at last, the whole question can be laid to rest.

But other nagging questions still hand around, like whiffs of powder after a battle. What was all that twisting and turning, backing and filling about, anyway? The administration, by letting the ABA know that it would no longer be in need of its services in screening prospective court nominees, is apparently trying to put the major blame on the ABA system that Attorney General Mitchell decided upon.

But though there were doubtless leaks in the process by which the committee of the ABA looked into the long list of potential nominees, we find it difficult to believe that at least part of the trouble didn't stem from the constant scurrying of the administration. Several of the names were credited to administration sources.

The administration, in exasperation, has gone too far, we believe, in scuttling the ABA review system. That some leaks are inevitable, as the ABA warned, is true; but some leaks are possible in any system. The ABA review has had time to do little more than get its feet wet, and the administration should have sought to tighten up the present system rather than tossing it out.

There is one other burning question for southerners: Can a conservative nominee from below the Mason-Dixon line make it through the mean 'ol Senate? Sen. William Spong thinks Mr. Powell can make it, and we have a distinct feeling, and a special hope, that he is right.

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[From the Virginia-Tennessean, Bristol, Va., October 23, 1971]

(16)

#### THE TWO NOMINEES AS WE SEE IT

President Nixon has played it relatively safe and as a result his two nominees to the U.S. Supreme Court will probably be confirmed by the Senate.

Lewis F. Powell Jr. and William H. Rehnquist are both so unknown nationally that the average man in the street probably isn't going to react one way or the other.

But especially in Mr. Powell, President Nixon has found that rarity he has been seeking for so long—a prominent, conservative southerner who does not have the taint of bitterly fighting racial integration.

Indeed, Mr. Powell is probably only one of a handful of prominent southerners who has a clean record, so to speak, on the issue of race.

To Mr. Nixon's benefit, obviously, is the unusually high regard with which Mr. Powell is held in the legal field, not only in the South but all over the nation. A Democrat, he is not likely to set off much if any partisan squabbling and Republicans who might like to see both nominees of their own party are likely to keep quiet if it looks like the Senate will approve Mr. Nixon's choices. They would probably keep silent rather than risk setting off any bitter partisan fighting.

But for the average citizen the names of Rehnquist and Powell mean nothing. Mr. Powell's reputation is almost exclusively confined to the legal profession and those members of Congress who have had association with the American Bar Association or the College of Trial Layers.

By the same token Mr. Rehnquist's reputation is confined mostly to the federal government because of his role as an assistant attorney general.

Perhaps this is good, perhaps not, but it is essential that qualified replacements be named quickly to the Supreme Court because of the backlog of cases including a long anticipated historic ruling on the legality of capital punishment.

It is no surprise, really, that President Nixon chose relative unknowns. Indeed, of all his nominees and potential nominees, only Judge Clement Haynsworth and U.S. Sen. Robert Bird really had any degree of general name identification.

The nominees, if approved, would serve Mr. Nixon's intended purpose of injecting a conservative balance to the Supreme Court which has leaned toward liberal interpretations of the Constitution since President Roosevelt "stacked" the Court during the New Deal.

But as we know years on the court can change a man's philosophy as with the late Hugo Black who had once belonged to the Ku Klux Klan while in Alabama and yet was the chief architect of many of the rulings which have stirred the ire of the KKK ever since.

We don't expect prolonged debate over the two nominees. Mr. Rehnquist has angered some Senators because of his view that President Nixon has almost unlimited executive powers and because of his advocacy for the use of wire-tapping.

But if those two points begin to develop into a battle, Administration forces can probably make a good case that Mr. Rehnquist was mainly doing his job and that his views as an assistant attorney general do not absolutely reflect his true views on these subjects.

The biggest disappointment, perhaps, is that Mr. Nixon did not name a woman, especially after dropping broad hints that he would. But there will be other vacancies, perhaps sooner than expected.

Meanwhile, we hope for speedy approval of the two nominees.

[A clipping from VPA News Clip Bureau, Richmond, Va., in the Northern Virginia Daily, Strasburg, Va., Oct. 23, 1971]

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#### HIGHLY QUALIFIED

President Nixon's nomination of Lewis F. Powell, Jr., of Richmond, for one of the vacancies on the United States Supreme Court is an event in which all Virginians can take pride.

On at least one occasion in the recent past Mr. Powell was mentioned as a possible nominee to the high court, but this time his was not among those names sent to the American Bar Association by the White House for qualification checks. Thus, his nomination came as something of an unexpected development in the Supreme Court sweepstakes.

However, there is little doubt, in Virginia or elsewhere, as to his qualifications for the high bench. Mr. Powell is nationally recognized for his ability in the field of jurisprudence. His services as president of the Richmond Bar Association, the American Bar Association, and the American College of Trial Lawyers attest to the high regard in which his colleagues in the legal profession hold him.

These attainments added to a lifetime of highly valuable civic services to the city of Richmond, the state of Virginia, and the Nation, mark Mr. Powell as a candidate who will grace the high court.

The very able Chief Justice Warren Burger, appointed in 1969, was the first Virginian to serve on the high court bench since 1860. Mr. Powell would be the second, and in our opinion his appointment would be as richly deserved.

We hope that confirmation of this distinguished Virginian by the senate will come swiftly.

[A clipping from VPA News Clip Bureau, Richmond, Va., in the Covington Virginian, Covington, Va., Oct. 25, 1971]

(18)

#### THE THEME OF EXCELLENCE

When he announced his two Supreme Court nominees in a surprise broadcast, President Nixon took occasion to stress the theme of outstanding excellence as the great requisite for service on the court. Observing that its members ought to be among our very best lawyers, the President remarked that "the Supreme Court is the fastest track in the nation."

This commendable stress on excellence apparently motivated Mr. Nixon in making his choice. Had he given this consideration more weight at the start of the search for persons to fill the court vacancies, the whole embarrassing business of having earlier prospects rejected by an American Bar Association committee might have been avoided.

Lewis F. Powell of Richmond, Va., is an able and greatly experienced trial lawyer who served as president of the American Bar Association a few years ago. In past years he has often been mentioned as a Supreme Court possibility, and his name came up again when Justices Black and Harlan resigned in September.

William H. Rehnquist, an assistant attorney general who had previously practiced law in Phoenix, Ariz., for 14 years, had not been rumored as a possible choice, his nomination came as a surprise to observers, including members of the Senate. In his Justice Department post he is said to have served capably as (in Mr. Nixon's words) "the chief interpreter of the Constitution for the whole government." He is held in high esteem by many fellow members of the Arizona bar, including some who disagree with his conservative philosophy.

Both Rehnquist and Powell stood at the head of their respective law classes, and have since done much to bear out that early indication of quality. Each of Mr. Nixon's choices, then—and this is said without regard to their attitudes on civil rights and related matters, which will be scrutinized in due course—is a man of stature who seems basically well qualified for the court.

The same could not be said for the four men and two women whose names the President had earlier presented to the American Bar Association for its assessment. Whatever their capabilities, none measured up to the high standards Mr. Nixon is now insisting upon. Sen. Robert C. Byrd, for example: far from being one of the nation's top lawyers, he is a night school product who has not practiced law. When things boiled down to Herschel H. Friday, a Little Rock bond lawyer, and California Appeals Court Judge Mildred L. Little, the ABA committee gave both a rating of "not qualified." The lesson of the Haynesworth and Carswell episodes is thus reiterated: excellence, not politics, should be the top consideration.

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[A clipping from VPA News-Clip Bureau, Richmond, Va., in the News-Gazette, Lexington, Va. Oct. 27, 1971]

(19)

#### THE POWELL APPOINTMENT

President Nixon has been charged in some quarters with a penchant for appointing mediocrity to public office, but he certainly did not follow that precedent in nominating Lewis Powell for the United States Supreme Court. We can think of no better qualified appointee.

Mr. Powell began his distinguished career early, while he was a student at Washington and Lee. Here he was elected president of the student body and after leading his law class was named to Phi Beta Kappa. He spent six years at the college here, completing his academic course in 1929 and law studies in 1931.

He has often revisited the campus both as an alumnus and a member of the university board of trustees, and more recently because he has a son who is a sophomore in the present student body who plays on the football team. Mr. Powell has many warm friends in Lexington who will be highly gratified that his outstanding abilities in the field of law have been properly recognized.

Powell is a Democrat, but a conservative one and a strict constructionist of the Constitution. One of his strongest feelings of late has been that the victim of lawlessness is not properly protected and compensated. He may be expected to try to rectify this situation that has tended to give maximum protection to the criminal.

In the field of public service the scholarly lawyer has also made an outstanding contribution. He has been chairman of the Richmond School Board and president of the State Board of Education during a time of great stresses because of minority problems. He helped inaugurate the successful Richmond council-manager form of government as chairman of the Richmond Charter Commission. He served constructively as a member of the President's Crime Commission in 1967 and the President's Blue Ribbon Defense panel which made a report last year.

A member of Richmond's most respected law firm, he has been president of the Richmond Bar Association, president of the American Bar Association and president of the American College of Trial Lawyers. He is a moderate on questions of civil rights.

Except in the eyes of those taking extreme positions, it is generally agreed that he will add strength and prestige to the Court. It may be anticipated that he will be confirmed speedily by the Senate with little opposition.

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A clipping from VPA News-Clip Bureau, Richmond, Va., in the Carroll News, Hillsville, Va., October 28, 1971]

(20)

#### POWELL AND REHNQUIST

The process of a president appointing replacement justices to the U.S. Supreme Court—with the only approval required—that of a majority of the Senate—may



never be a foregone conclusion again, and this is good. However, the recent skeet-shooting procedure of "toss them up, shoot them down" can only undermine confidence in the nation's highest court. Somewhere there is a middle ground, where responsible senators may endorse the right men for the high court, free from political considerations and the pressures of too much early publicity.

Last Thursday, Oct. 21, President Nixon nominated 64-year old Lewis F. Powell of Richmond and 47-year old William Rehnquist as his latest selections for the Supreme Court.

Powell, a practicing attorney since 1931, is a former president of The American Bar Association. The president was high in praise, saying:

" . . . Like Chief Justice Marshall, also of Virginia, Powell is recognized as a man who will represent not just Virginia and the South but all America."

Nixon said he rated Rehnquist as "having one of the finest legal minds in the whole country today," and praised him as being "at the very top as a constitutional lawyer and a legal scholar."

Both men were described by the president as "conservatives, but only in a judicial, not a political sense."

U.S. Attorney General John Mitchell announced that his office is ending the practice of consulting the American Bar Association before making nominations to the court to avoid further "premature publication of information" on the list of possible nominees. This does not mean creation of a new policy, but a return to an old one.

Extremely careful screening of candidates by the president and his advisors before submitting nominees to the senate for approval, and responsible, sober evaluation by the senate of those nominees must go hand in hand.

We hope these nominations will be given the attention they deserve by the Senate, free from all outside pressures.

The president said "it is our obligation to obey the law, whether we like it or not, and our duty to respect the Court as the final interpreter of the law, if America is to remain a free nation."

The Carroll News feels that confirmation of Powell and Rehnquist could go a long way toward building and maintaining confidence in the Supreme Court.

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[From the Richmond Times-Dispatch, November 1, 1971]

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### POWELL: VOICE OF RESTRAINT

(By Henry J. Taylor)

In considering President Nixon's nomination of Lewis F. Powell Jr. for the Supreme Court the Senate is considering a remarkably able man.

Conservative? Liberal? These abused labels are vague and somewhat like a fog; they cover a lot of territory, but badly.

Moreover, true liberalism is actually a frame of mind and so-called conservatism must be receptive to change if it is successfully to conserve. Accordingly, the mere labels are as confused and confusing today as the gypsies in Spain who dance at funerals and cry at christenings.

The essential point is that this former president of the American Bar Association and scholar of our Constitution knows history, knows our laws, our country and the world today and most certainly will not cop out from responsibility.

That the Liberty Bell in Philadelphia's Independence Hall is cracked can always be regarded by us as a suitable warning. The hallowed bell was cracked on July 8, 1835, while tolling at the funeral of Chief Justice John Marshall.

At first the Supreme Court's rights were hardly solid. This great jurist made it possible, in his time and thereafter, for the Supreme Court to claim the power to supersede the acts of Congress.

But in recent years the Supreme Court has been pushing itself increasingly into questions that are really for the legislative branch to decide. It has been writing its own majority's social and economic views into law. It has been advancing its own social-economic preferences, not restrained by the Constitution or limited to the laws Congress enacted.

Chief Justice Charles Evans Hughes once wrote that our Constitution "is what the justices say it is." But the court has clearly departed from its constitutional moorings and, in effect, legislated as if it were a legislative body itself.

Even within the court, Justice John M. Harlan stated: "This court can increase respect for the Constitution only if it rightly respects the limitations which the Constitution places on this court. In the present case we exceed that. Our voice becomes only the voice of power, not constitutional opinion."

By legislating as well as adjudicating, the court has amazed and alarmed many of our country's finest constitutional lawyers, regardless of party or social-economic viewpoints. They saw destroyed the three fundamental separations of power in our government.

The court's decisions are actually another matter entirely. And widely publicized public resentments against these—very severe—are a separate and different issue. How severe? At the time President Nixon was inaugurated a Gallup poll indicated that about 60 per cent of the American people disapproved of the Supreme Court's positions.

The court's continued twisting of the Constitution and the statutes in the cases judged has made a shambles of government by law in our country. It has so manhandled the First, Fifth and Fourteenth Amendments that the country is powerless to live and operate except in ways literally originated by the court.

The Court has leaned over backward in behalf of criminals and shown much more concern for the felons than for their victims. The lower courts, of course, have had to conform. Yet, are the "rights" of troublemakers more important than the rights of the sufferers?

Listen, for example, to Pennsylvania Chief Justice John C. Bell: "The Supreme Court's decisions which shackle the police and courts make it all but impossible to protect society from criminals and also are among the principal reasons for the near-revolutionary conditions."

The end product? The consequent loss of the freedoms which are the supposed goal of judicial lawmaking.

Law is never able to catch more than a part of life; an important and vital part usually defies and escapes legal definition. Moreover, the Supreme Court's decisions are not "the law of the land," as so often erroneously described. They are the law of the case. But, in announcing Powell's nomination and that of William H. Rehnquist, Nixon truly stated: "Presidents come and go but the Supreme Court through its decisions goes on forever." And Powell's character gives him standards for the public welfare and the ageless questions of the common good.

Lewis F. Powell believes in those standards and has followed them throughout his distinguished career, come what may.

### **STATEMENT OF HON. DAVID E. SATTERFIELD III, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA**

Mr. SATTERFIELD. Mr. Chairman, I appreciate this opportunity also to appear here this morning.

I realize the press of time on this committee and I shall not impose upon it.

It is not only an honor and a privilege to appear in behalf of Lewis Powell, but I also have the privilege to act as spokesman for the entire Virginia delegation who endorse his nomination.

I think it is a measure of the depth of that support, the fact that all of them are here this morning in person to convey their feelings and to express their endorsement of his nomination to this committee.

I cannot let the moment pass without making one brief observation.

I have known Lewis Powell all of my life and I have known him somewhat intimately the last 25 years through the practice of law and I would like to tell you that I know that he is a man of impeccable integrity. I know him to possess a tremendous intellectual capacity, a keen analytical mind which is remarkable in its inquisitive and perceptive capacity. He has an eminent record for distinguished public and professional service which has demonstrated time and again an objective, orderly, and judicious approach to problems.