

# ABA Tells of Role In Court Choices

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By John P. MacKenzie  
Washington Post Staff Writer

Attorney General John N. Mitchell offered a Supreme Court nomination to Richmond attorney Lewis F. Powell Jr. before the American Bar Association found the administration's two top candidates unqualified, a special ABA report disclosed yesterday.

The offer to Powell, which was quickly followed up with a personal plea from President Nixon, came on Oct. 19, two days before the President announced his choice of Powell and William H. Rehnquist on national television, the report said.

By the time Powell was urged to accept the nomination, the report said, the ABA had indicated to Mitchell that the administration's top choices, Herschel H. Friday and Mildred L. Lillie, probably would not receive ABA endorsement.

These disclosures, shedding additional light on the process that led to the Powell and Rehnquist nominations, came in a 27-page memorandum from the ABA's 12-member judiciary committee to the 281 members of the ABA's policy-making House of Delegates.

The purpose of the report was to give the ABA's side of the dealings between the committee and the Justice Department over the screening of candidates for the two Supreme Court vacancies. Mitchell broke off relations with the ABA committee on Oct. 21, saying that confidential consultation with the bar had proved impossible.

The committee said it regretted that Mitchell was dis-

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# ABA Reports on Its Court Role

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satisfied with the short-lived "experiment" of seeking the ABA's judgment on proposed nominees before the attorney general recommended anyone to the President.

In its report the committee denied responsibility for newspaper reports about six persons, including Friday and Mrs. Lillie, whose qualifications were under investigation between Oct. 12 and Oct. 20.

The committee also denied responsibility for a report in The Washington Post Oct. 21 that both Friday and Judge Lillie had been found "not qualified" at a secret meeting the previous day.

Noting that a reporter for The Washington Post had de-

clined to say whether a committee member had been a source for the story, the committee suggested that "an administration leak" may have been to blame.

Howard Simons, managing editor of The Washington Post, said last night that the information did not come from the Justice Department or from anyone else in the Nixon administration.

A spokesman for the Justice Department said Mitchell "categorically denied" that anyone in the department divulged the information contained in The Post's story and that "to Mitchell's knowledge, no one in the White House was responsible either."

The committee report said

The Post's story was a "substantially accurate" account of the bar group's judgment on Friday and Mrs. Lillie. It confirmed that Mrs. Lillie had been found "not qualified" by an 11-to-1 vote but noted that six committee members found Friday "not qualified" and six others said they were "not opposed" to him.

Under committee rules Friday needed eight votes to win minimal ABA endorsement. The Post reported that the vote against Friday was 7 to 5.

The report disclosed numerous behind-the-scenes communications between the committee chairman Lawrence E. Walsh of New York and Mitchell or his deputy, Richard G. Kleindienst.

One key communication was a warning late last month with regard to Rep. Richard H. Poff (R-Va.), then the leading candidate for one of the high court vacancies, that Poff's "relatively short experience (four years) in the actual practice of law" was one of the "problems" that had arisen in his case. Poff withdrew as a candidate on Oct. 2 before the ABA committee could take a position on his then-expected nomination.

The ABA committee is expected to make its report today on its views of Powell and Rehnquist. The report will go to the Senate Judiciary Committee, which opens confirmation hearings Wednesday.