

# Powell Defends Integration Role

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Lewis F. Powell Jr. told the Senate Judiciary Committee yesterday he was proud to have worked to keep Virginia schools open in the face of the state's official "massive resistance" segregation policy of the 1950s.

Powell, 64-year-old Supreme Court nominee, said he played "some part, though a modest part, in moving Virginia toward a progressive and fair policy" as a member of the Richmond and Virginia school boards.

Referring to Negroes on one occasion as "our black brothers," Powell said he opposed state tuition grant plans and other devices to circumvent the Supreme Court's 1954 decision.

In low-keyed tones the lean, conservative Richmond lawyer told Chairman James O. Eastland (D-Miss.) and other committee members that he favored locating new high

schools in a way that would promote desegregation. He said he supported other equal education measures despite "strong forces" against them and "all sorts of criticism, mostly by whites."

At the witness table, Powell was accompanied at some times by Sen. Harry Flood Byrd Jr., son of the architect of Virginia's massive resistance policy. At other times Sen. William B. Spong (D-Va.), with whom Powell worked to keep the schools open, was at the nominee's side.

Committee liberals, many expressing their admiration for Powell, handled him gently, often attempting to draw an unfavorable contrast with the other nominee, Assistant Attorney General William H. Rehnquist, over civil rights issues.

"Have you at any time dur-

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ing the last ten years voiced opposition to a public accommodations law or ordinance?" asked Sen. Philip A. Hart (D-Mich.). Powell said he had not.

Completion of Powell's testimony set the stage for witnesses for and against both nominees when the committee meets today. Eastland, maintaining a swift pace for the hearings, said he hoped the committee could hold an executive session sometime this week to start clearing the nominations for floor action at least a week later.

One attempt to recall Rehnquist for further testimony on his philosophy was rebuffed by Attorney General John N. Mitchell in a letter to Sen. Birch Bayh (D-Ind.).

Last week Bayh, expressing frustration at Rehnquist's refusal to answer certain questions, wrote Mitchell asking that he waive the "attorney-client privilege" invoked by Rehnquist. As head of the Justice Department's Office of

Legal Counsel, Rehnquist has specialized in rendering legal advice to the administration. President Nixon said Rehnquist's job was to be "the President's lawyer's lawyer."

In reply, Mitchell said it would be "entirely inappropriate" for him or the President to release Rehnquist to testify as to whether he personally believed in positions he took in public.

Such a waiver would expose confidential policy positions taken within the executive branch, so that in the future the attorney general might not have the benefit of "the free exchange of ideas and thoughts so essential to the proper and judicious discharge of my duties," Mitchell wrote.

Mitchell, who has tangled with Bayh over previous high court nominations, stressed in his letter that the waiver request "is made by you individually rather than by the full Senate Judiciary Committee." He said Eastland and Sen. Roman L. Hruska (R-Neb.), the ranking GOP member, had written him that the committee never before tried to get such a waiver.

Bay said the President's own emphasis on the "judicial philosophy" of his nominees made the inquiry appropriate. He said Mitchell's refusal "has made it extremely difficult" to examine Rehnquist's philosophy despite the nominees own agreement that his philosophy is relevant to the question of confirmation.

Powell said he felt he had an open mind on most criminal law issues despite his

strongly worded articles criticizing some Supreme Court decisions and denouncing as "standard leftist propaganda" charges that the government was invading privacy with wiretaps and other surveillance.

He said he admired many rulings of the "Warren Court," including decisions that state courts may not admit illegally seized evidence and that states must provide free legal counsel to indigent defendants.

Even the controversial 1964 decision throwing out the confession of Chicago defendant Danny Escobedo was correct, Powell said. He emphasized, however, that he disagreed with the breadth of the court's rulings that forbid most questioning of suspects at the scene of a crime.

Sen. Sam J. Ervin Jr. (D-N.C.) took exception to Powell's 1967 criticism of a Supreme Court ruling that state prosecutors must not com-

ment about the failure of an accused to testify in their own defense.

If the prosecutor can call that to the jury's attention, Ervin said, "there is nothing left of the presumption of innocence." Powell said he didn't think the prosecution tactic would compel a defendant to be a witness against himself.

Sen. Edward M. Kennedy (D-Mass.) cross-examined Powell about having said that some dissenters' complaints of "repression" were "standard leftist propaganda."

Kennedy placed in the record an FBI agent's statement—contained in papers stolen from the Bureau's Media, Pa., office last March—that questioning dissenters would "enhance the paranoia" characteristic of the radical left and make radicals think there was "an FBI agent behind every mailbox."

Suggesting that "rational men" could also be disturbed

about such matters, Kennedy asked, "Does this sort of thing concern you at all?"

"Of course it does," Powell replied. "The excerpt you read suggests an intolerable situation. I don't think anybody could support that type of society."

Powell said he would take steps if confirmed to minimize stock holdings in companies likely to come before the court. But he said the idea of a blind trust, which he had favored initially, might prove "awkward" in light of developing ethical standards.

Current federal law and proposed new canons of ethics require judges to know what is in their portfolios, which seems to rule out a system by which the judge insulates himself from his holdings and knowledge about them, Powell said. His investments, which Powell said did not include his entire assets, have an estimated value of more than \$1.4 million.