

**Lewis F. Powell Jr.**

# A Behind-Scenes Power

## Washington

Lewis F. Powell Jr., the conservative Virginian selected by President Nixon for the Supreme Court, is one of the nation's most respected and admired lawyers.

According to lawyers who know him well, Powell would have been content to go on being just that — a very successful Richmond lawyer and not a justice of the Supreme Court.

Once he is installed on the high bench, however, few doubt that he will take an active role in the court's most sensitive cases and will not hesitate, when the occasion arises, to vote to topple some of the decisions he has joined in criticizing.

## COMMISSION

As a leader of a splinter group on President Johnson's National Crime Commission, Powell wrote a separate opinion to the commission's 1967 report, advocating one or more constitutional amendments to redress what he described — in terms quite similar to President Nixon's last night — as "an imbalance" between "the rights of the accused" and "the rights of citizens."

The rest of the commission considered court decisions as being of relatively minor impact on crime. They believed discussion of liberal Supreme Court decisions were a diversion from the task of raising the quality of police forces, overhauling inefficient courts and modernizing corrections systems.

But the Powell group said attention must also be paid to the impact of the 1966 *Miranda vs. Arizona* confessions ruling.

## IMPACT

"Few can doubt the adverse impact of *Miranda* upon the law enforcement process," he said. If implemented "in its full sweep, it could mean the virtual elimination of the pretrial interrogation of suspects."



LEWIS F. POWELL JR.  
He dissented on crime

It is precisely in the area of implementing *Miranda* that Powell can affect decisively the questions that concerned him in 1967. Even without a constitutional amendment or a direct overruling of the decision, Powell can vote whether to extend or diminish the safeguards given the accused under the Fifth Amendment's guarantee against self-incrimination.

Powell's genial, quiet manner often conceals the strictness of his own legal code and his preference for broader wiretap powers for police. In public speeches he sternly condemns disorderly demonstrators and those who he considers disorderly lawyers — but always in a manner which does not give offense to the listener.

## POSITION

He has said in the past that his position on the rights of demonstrators is not far from that of former Justice Abe Fortas: There should be an area of protection for the orderly persons and swift punishment for the actions, not the speech, of the disruptive ones.

If Powell lives up to his

reputation, he will strike a more conservative chord in his judicial opinions, but he will do so in a way that does not shock the sensibilities of lawyers and observers who are concerned with the quality of the court's work as well as which side wins.

His record on civil rights issues leaves wide open a major question about the Supreme Court's future course. Considered a moderate as head of the Richmond and the Virginia Boards of Education, he wrote a friend-of-the-court brief last year urging a go-slow approach to school busing. Most of his arguments were rejected by the unanimous court.

## BYPASS

Ironically, the President and Attorney General John N. Mitchell chose to bypass the ABA's Judiciary Committee entirely for Powell's nomination. If the committee had been consulted, few doubt that Powell, unlike Mr. Nixon's previous reported choices, would have received the highest accolades for professional competence the ABA could bestow.

Powell was president of the ABA in 1964 and 1965. He took an activist's view of the president's role, pressing for change and working quietly but effectively to raise the ABA's public image.

Determined to keep the ABA from suffering the criticism heaped on the organized medical profession for opposing changes, Powell pushed the ABA into vigorous endorsement for an expanded, generously financed and federally supported program of legal services for the poor.

Perhaps more than any other bar leader, Powell assured a skeptical legal community that lawyers, not social workers, would be in command of the program. That was enough to inspire ABA confidence in the program's formative years and to create a formidable organized bar "lobby" to go to the program's aid when it came under political attack.

## STANDARDS

Powell spearheaded an ABA program of compiling a set of "standards for criminal justice" under the chairmanship of conservative Circuit Judge J. Edward Lumbard of New York, who was succeeded by circuit Judge Warren E. Burger for a brief

period before Burger's appointment to the Supreme Court.

The justice-standards project was moderate in tone and sometimes "liberal in proposing expanded rights for the accused." But its prime sponsors pushed for a new code of criminal standards partly in the hope that such a code would give "guidance to the Supreme Court and help curb its expansionist decision-making."

Out of the justice standards project grew the sometimes controversial ABA guidelines to protect against pretrial publicity. A public trial, Powell argued, "does not mean a spectacle before the public at large. There are areas of privacy where respect for the individual precludes satisfaction of public curiosity."

## CODE

His insistence on trials sheltered from the distraction of press publicity was in harmony with his drive within the American College of Trial Lawyers, a select group inside the legal profession, for a code of procedure to deal with the disruptive defendant and the disruptive lawyer.

Powell's law firm — Hun-

ton, Williams, Gay, Powell and Gibson — is considered by many one of the most prestigious in the South. It has an unusual rule against permitting its members to run for political office, but the rule does not preclude campaigns for school board and other public service.

One assignment Powell undertook in 1969 stirred criticism from Senator William Proxmire (Dem-Wis.). He was one of several prominent persons on a committee which studied Pentagon management policies. Proxmire called the study a "sham" dominated by defense industry representatives and said Powell's firm had major contractors as clients.

Powell, 64, was born in Suffolk, Va. He is a Phi Beta Kappa graduate of Washington and Lee University and was first in his law school class there. He holds a master of laws degree from Harvard. He is married to the former Josephine Rucker. His four children are Mrs. Richard S. Smith of New York, Mrs. Basil T. Carmody of Brussels, Belgium, Mrs. Christopher J. Sumner, a student at UCLA law school, and Lewis Jr., a student at Washington and Lee.

*Washington Post Service*

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