

FEDERAL BUREAU OF INVESTIGATION
FREEDOM OF INFORMATION/PRIVACY ACTS SECTION
COVER SHEET

SUBJECT: LEWIS F. POWELL, JR.
FILE # 77-HQ-121928

OCT 26 1971

132

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Director, Federal Bureau of Investigation

DATE: 10-22-71

FROM : John T. Duffner
Exec. Asst. to DAG

Powell, Lewis FRANKLIN Jr.

SUBJECT	DATE OF BIRTH
Lewis F. Powell, Jr.	9-19-07
POSITION	OFFICE OR DIVISION (Location)
Associate Justice (CHECK ONE)	Supreme Court
<input type="checkbox"/> EMPLOYEE <input checked="" type="checkbox"/> APPLICANT	<input checked="" type="checkbox"/> SENSITIVE <input type="checkbox"/> NON-SENSITIVE
ENTERED ON DUTY	TYPE OF APPOINTMENT

- Please institute the usual character investigation in this matter and forward copies of the reports to this office.
- Please furnish results of Name Check and search of Identification Records prior to completion of investigation.

Standard Forms 86 are attached. Please return the original signed copy with the final report of this investigation.

- Name Check made
- Fingerprint Chart attached

- Please institute a name check of this individual whose Standard Form 57/86 is enclosed. The Fingerprint Chart is being forwarded to the Identification Building.

- Please discontinue the character investigation in this matter. Standard Form 86 submitted with our request should be returned to this office.

Completion date C.O.B. 10-28-71

MCT-33
REC

121928 - 1

OCT 26 1971

~~ENCLOSURE~~
ask to make new
re pg 2 from 86
attached 3/6
10/26/71

Wilson

PLAINTEXT

10/22/71

TELETYPE

IMMEDIATE

TO SACS RICHMOND
NORFOLK
BOSTON
JACKSONVILLE
ST. LOUIS
ALEXANDRIA
CHICAGO
WASHINGTON FIELD
NEW YORK
LOS ANGELES
CHARLOTTE
PITTSBURGH
BALTIMORE
NEWARK
NEW ORLEANS
COLUMBIA

PERSONAL ATTENTION

REC-3 EX-104 77-12195-1

FROM DIRECTOR FBI

JUSTICE, U. S. SUPREME COURT.

LEWIS FRANKLIN POWELL, JR., DAPLI, BUDED/WEDNESDAY NOON,

NEXT, WITHOUT FAIL. NO DELAY WILL BE TOLERATED.

RE BUREAU TELEPHONE CALL TO RICHMOND THIS DATE.

APPLICANT BORN SEPTEMBER NINETEEN, NINETEEN SEVEN (VERIFY BY BUREAU OF VITAL STATISTICS RECORDS), AT SUFFOLK, VIRGINIA. SEE "WHO'S WHO IN AMERICA" CURRENT EDITION FOR MORE COMPLETE DETAILS.

RICHMOND: INTERVIEW APPLICANT IMMEDIATELY FOR COMPLETE

- Tolson _____
- Felt _____
- Rosen _____
- Mohr _____
- Bishop _____
- Miller, E.S. _____
- Callahan _____
- Casper _____
- Conrad _____
- Dalbey _____
- Cleveland _____
- Ponder _____
- Bates _____
- Tavel _____
- Walters _____
- Soyars _____
- Tele. Room _____
- Holmes _____
- Gandy _____

BACKGROUND DETAILS, INCLUDING EDUCATION, EMPLOYMENT, MEMBERSHIP

IN PRIVATE CLUBS, ETC. ALL PERIODS OF APPLICANT'S LIFE,

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

RBL: hrb
(4)

OCT 22 1971

7:50pm TMT
TELETYPE

54 JAN 11 1972

MAIL ROOM TELETYPE UNIT

RETURN TO MR. [REDACTED] ROOM 1250

lg/btc

[Handwritten signatures and initials]

TELETYPE TO RICHMOND
RE: LEWIS FRANKLIN POWELL, JR.

INCLUDING PART-TIME EMPLOYMENT AND SUMMER ACTIVITIES SINCE GRADUATION FROM HIGH SCHOOL, MUST BE ACCOUNTED FOR. ALSO ASCERTAIN WHERE APPLICANT GRADUATED FROM HIGH SCHOOL AND INSURE APPROPRIATE INVESTIGATION CONDUCTED THAT LOCALITY. ASCERTAIN IDENTITIES AND CURRENT RESIDENCES OF CLOSE RELATIVES, INCLUDING IN-LAWS, AND VERIFY RESIDENCES OF CLOSE RELATIVES THROUGH ACTIVE INVESTIGATION. DISCREETLY ASCERTAIN REPUTATION AND CONDUCT ARREST CHECKS. SUTEL BUREAU IDENTIFYING DATA CONCERNING ANY DECEASED CLOSE RELATIVES. ALSO ASCERTAIN PERSONAL PHYSICIAN. USE SF EIGHTY-SIX AS GUIDE IN OBTAINING ALL PERTINENT INFORMATION. ADVISE ALEXANDRIA, AND WASHINGTON FIELD AND BUREAU OF ANY FOREIGN TRAVEL.

IN THE INTERVIEW OF APPLICANT YOU SHOULD DETERMINE ANY BUSINESS INTERESTS, IDENTIFYING ENTERPRISES IN WHICH HE IS OFFICER OR DIRECTOR, WHETHER HE HAS EVER BEEN ARRESTED OR IS PRESENTLY UNDER INVESTIGATION FOR POSSIBLE VIOLATION OF A CRIMINAL STATUTE, WHETHER THERE ARE ANY TAX LIENS OR OTHER COLLECTION PROCEDURES INSTITUTED BY EITHER FEDERAL, STATE, OR LOCAL AUTHORITIES, WHETHER HE HAS EVER BEEN SUED OR BEEN A PARTY OF INTEREST IN A LEGAL PROCEEDING, WHETHER HE HAS WRITTEN OR PUBLISHED ANY LEGAL ARTICLES, WHETHER HE HAS RECEIVED ANY PRIZES OR HONORS OR OTHER FORMS OF RECOGNITION, WHAT SIGNIFICANT OR POSSIBLY CONTROVERSIAL SPEECHES HE HAS MADE AND THE LOCALITY

TELETYPE TO RICHMOND
RE: LEWIS FRANKLIN POWELL, JR.

WHERE THOSE SPEECHES WERE MADE, WHETHER HE HAS ANY REAL ESTATE HOLDINGS, AND WHETHER HE HAS ANY INVESTMENTS OR HAS TAKEN ANY OFFICIAL ACTION WHICH MIGHT RAISE QUESTION OF CONFLICT OF INTEREST.

BALTIMORE: CHECK DCII, RICHMOND TO FURNISH MILITARY NUMBER.

ALL OFFICES: DO NOT CONDUCT NEIGHBORHOOD INVESTIGATION. APPROPRIATE PERSONS SHOULD BE INTERVIEWED TO DETERMINE APPLICANT'S LEANINGS TOWARD CIVIL RIGHTS MATTERS AND HIS JUDICIAL ABILITY AND TEMPERAMENT. NEWSPAPER MORGUES SHOULD BE CHECKED EVERYWHERE HE LIVED, WORKED, ATTENDED SCHOOL, MADE PUBLIC SPEECHES, ETC. IF NO MORGUE MAINTAINED, CONSIDER DISCREET INTERVIEW OF EDITOR OR PUBLISHER. DETERMINE IF ORGANIZATIONS TO WHICH HE BELONGED OR REAL ESTATE WHICH HE OWNED HAVE RESTRICTIONS IN REGARD TO RACE OR RELIGION. A REPRESENTATIVE NUMBER OF ATTORNEYS OF BOTH MAJOR POLITICAL PARTIES SHOULD BE INTERVIEWED.

ST. LOUIS: CHECK NPRC-M RE POWELL. RICHMOND TO FURNISH MILITARY SERVICE NUMBER.

RICHMOND: PROMPTLY FURNISH MILITARY SERVICE NUMBER TO BALTIMORE AND ST. LOUIS AND SOCIAL SECURITY NUMBER TO BUREAU AND WASHINGTON FIELD.

FOR INFORMATION OF ALL OFFICES FOLLOWING PERSONS HAVE FURNISHED FAVORABLE RECOMMENDATIONS TO ATTORNEY GENERAL'S OFFICE OR PRESIDENT RE POWELL SINCE NINETEEN SIXTY-NINE. THEY SHOULD

TELETYPE TO RICHMOND
RE: LEWIS FRANKLIN POWELL, JR.

BE INTERVIEWED FOR COMMENTS IF AVAILABLE.

RICHMOND: [REDACTED] VIRGINIA TRIAL LAWYERS
ASSOCIATION, SEVEN TWO TWO MUTUAL BUILDING, RICHMOND, VIRGINIA;
[REDACTED] RICHMOND,
VIRGINIA; [REDACTED]
[REDACTED] SOUTHERN
STATES COOPERATIVE, INCORPORATED, SEVENTH AND MAIN STREETS,
RICHMOND; [REDACTED]
RICHMOND; [REDACTED] WAYNESBORO VIRGINIA CONNECTED
WITH STAUNTON - AUGUSTA BAR ASSOCIATION; [REDACTED]
[REDACTED] VIRGINIA STATE BAR, NINTH STREET OFFICE BUILDING;
[REDACTED] BAR ASSOCIATION OF CITY OF RICHMOND;
[REDACTED] RICHMOND TIMES DISPATCH;
MRS. [REDACTED] INSURANCE COMPANY, ONE TWO ONE ONE
ROSENEATH ROAD, RICHMOND; [REDACTED] VIRGINIA BAR
ASSOCIATION, SEVEN ZERO ZERO BUILDING, SEVENTH AND MAIN, RICHMOND.

NEW ORLEANS: [REDACTED] PIONEER BUILDING,
LAKE CHARLES, LOUISIANA; [REDACTED]
BECK BUILDING, SHREVEPORT; [REDACTED] FORMER
/MEMBER ABA FEDERAL
JUDICIARY COMMITTEE, POST OFFICE BOX ONE FIVE EIGHT EIGHT,
BATON ROUGE.

TELETYPE TO RICHMOND
RE: LEWIS FRANKLIN POWELL, JR.

COLUMBIA: [REDACTED] ATTORNEY, ONE TWO ONE THREE
LADY STREET, COLUMBIA, SOUTH CAROLINA.

NEWARK: [REDACTED]

NEWARK, NEW JERSEY.

BALTIMORE: [REDACTED]

[REDACTED] BALTIMORE.

NEW YORK: [REDACTED] OF WHITE AND CASE, ONE FOUR
WALL DRIVE, NEW YORK, NEW YORK, AND [REDACTED]
OF SIMPSON, THACKER AND BARTLETT, ONE TWO ZERO, BROADWAY,
NEW YORK.

WASHINGTON FIELD: [REDACTED] FEDERAL BAR ASSOCIATION,
ONE EIGHT ONE FIVE H. STREET, N.W., WASHINGTON, D. C.

ALSO CONTACT U. S. SENATORS FROM VIRGINIA AND APPROPRIATE
NUMBER OF U. S. REPRESENTATIVES FOR THEIR COMMENTS. IRS CHECK
HAS BEEN REQUESTED THROUGH LIAISON SOURCES.

ALL OFFICES: FOLLOW [REDACTED] INSTRUCTIONS AND REFER TO PAGE
TWO TWO ZERO AND TWO TWO ONE, PART THREE, FBI HANDBOOK, WITH
SPECIFIC REFERENCE TO PARAGRAPH G, TWO TWO ONE. ALL SIX ITEMS
MUST BE COMPLETELY COVERED. SET OUT LEADS BY TELEPHONE, ADVISE
BUREAU OF AUXILIARY OFFICES BY TELETYPE. WHERE APPROPRIATE,
CHECK ADMISSION TO AMERICAN BAR ASSOCIATION, STATE AND LOCAL
BARS, AND CHECK GRIEVANCE COMMITTEE RECORDS.

TELETYPE TO RICHMOND
RE: LEWIS FRANKLIN POWELL, JR.

ALL INVESTIGATIONS MUST BE COMPLETED AND SUBMITTED TO BUREAU BY NOON, WEDNESDAY.

PERTINENT DOCUMENTS SUCH AS NEWSPAPER CLIPPINGS, COPIES OF SPEECHES, ETC., MUST BE ATTACHED TO REPORT WITH THE RESULTS OF INVESTIGATION ORGANIZED IN SAME SEQUENCE AS SET FORTH IN THE HANDBOOK, AND MUST BE ACCOMPANIED BY A TABLE OF CONTENTS.

ALL OFFICES SHOULD ANSWER PRESS INQUIRIES WITH "NO COMMENT."

EACH OFFICE SUBMIT FIVE COPIES OF REPORT. LENGTHY REPORTS SHOULD BE PLACED ON COMMERCIAL AIRLINES TO NATIONAL AIRPORT, WASHINGTON, D. C., AND WASHINGTON FIELD NOTIFIED TELEPHONICALLY TO PICK UP. SHORT REPORTS MAY BE FURNISHED BUREAU BY FACSIMILE MACHINE.

ADDITIONAL PERSONS WHO HAVE FURNISHED COMMENTS TO PRESIDENT OR ATTORNEY GENERAL ARE:

RICHMOND: DAVID E. SATTERFIELD III, U. S. CONGRESSMAN, AND

*bb
b7c*
[REDACTED]

WASHINGTON FIELD: [REDACTED] WORLD TRADE RELATIONS, INCORPORATED, DUPONT CIRCLE BUILDING, WASHINGTON, D. C.; HENRY BELLMON, SENATOR FROM OKLAHOMA; JOHN O. MARSH, JR., U. S. CONGRESSMAN; AND WILLIAM L. SCOTT, U. S. CONGRESSMAN.

RA

October 22, 1971

PERSONAL

8

Honorable Lewis F. Powell
Post Office Box 1535
Richmond, Virginia 23212

Dear Mr. Powell:

[Handwritten signature]

The President's announcement last night of his intent to place your name in nomination as Associate Justice of the Supreme Court of the United States was indeed good news. Your career has certainly been distinguished and bodes well for the future of the Court. You have my sincere congratulations on this honor and my best wishes for success.

[Handwritten mark]

Sincerely yours,

J. Edgar Hoover

MAILED 7
OCT 22 1971
FBI

REC-14
77-121928-2
12 OCT 22 1971

[Handwritten initials]

1 - Richmond

- Tolson _____
- Felt _____
- Rosen _____
- Mohr _____
- Bishop _____
- Miller, E.S. _____
- Callahan _____
- Casper _____
- Conrad _____
- Dalbey _____
- Cleveland _____
- Ponder _____
- Bates _____
- Tavel _____
- Walters _____
- Soyars _____
- Tele. Room _____
- Holmes _____
- Gandy _____

NOTE: Mr. Powell is on the Special Correspondents List.

JBT:djg (4)

[Handwritten initials]

55 NOV 2 1971

MAIL ROOM TELETYPE UNIT

[Handwritten initials: TSB, JBT, MSR, etc.]

SEARCH SLIP

Subj:

Lewis Franklin Powell

Supervisor

Room

R#

Date

10/22

Searcher

Initial

mm

Prod.

FILE NUMBER

SERIAL

Lewis F.

N.P.	94-1-369-1852
N.P.	-1812
N.P.	-1805
N.P.	-1803
N.P.	-1783
N.P.	-1778
N.P.	-1729
N.P.	-1727
N.P.	-1700
N.P.	-1688
N.P.	-1622
N.P.	-1618
N.P.	-1600
N.P.	-1595
N.P.	-1591
N.P.	-1590
N.P.	-1467
N.P.	-1449
N.P.	-1438
N.P.	-1194pb
N.P.	94-1-4470-235
N.P.	94-1-22423-2

SEARCH SLIP

Subj:

Lewis Franklin Powell

Supervisor

Room

R#

Date

10/22

Searcher

Initial

mm

Prod.

FILE NUMBER

SERIAL

Lewis F.

N.P.	62-44172-7
N.P.	-5
N.P.	62-109090-236 ^{see 132111} Encl
N.P.	Vol II p 210, 253, 294
N.P.	Vol III p 390
N.P.	63-383-176
N.P.	63-383-156
N.P.	94-1-369-1993
N.P.	-1984
N.P.	-1967
N.P.	-1963
N.P.	-1957
N.P.	-1942
N.P.	-1879
N.P.	-1878
N.P.	-1823
N.P.	-1908
N.P.	-1877
N.P.	-1876
N.P.	-1875
N.P.	-1866
N.P.	-1865
N.P.	-1864

*

*N.P.

SEARCH S

Subj:

Lewis Franklin Powell

Supervisor

Room

R#

609

Date

10/27

Searcher Initial

mm

Prod.

FILE NUMBER

SERIAL

Lewis

NP	91-6591-107	
NP	[REDACTED]	b6 b7c
NP	-1897	
NP	-1951	
NP	-2074	
NP	-2187	
NP	94-8-350-1999	b6 b7c
NP	94-61364-2	
NP	100-3-1-9	
NP	100-79494-206	
NP	[REDACTED]	-704
NP	[REDACTED]	-932
P	62-109348-12	
NP	[REDACTED]	-1
NP	[REDACTED]	-2
NP	[REDACTED]	-3 b6 b7c
NP	[REDACTED]	-1
NP	[REDACTED]	-2
NP	[REDACTED]	-1524p4,6, 7, 9, 10, 14, 17, 29
NP	[REDACTED]	-1805
NP	[REDACTED]	-1727

SEARCH SLIP

Subj:

Supervisor

Room

R#

609

Date

10/27

Searcher Initial

mm

Prod.

FILE NUMBER

SERIAL

Lewis F.

P	94-1-369-A	Evening
	Star 2/9/65	
P	94-1-369-A	Doc 2/27
	Lewis E.	
	ST	
	Lewis	
NP	[REDACTED]	M. Fuller
NP	42-99731	M. Fuller
	Lewis F.	
P	94-66414-1	
NR	125-351585-33398	3
MPI	115-92555-4618	
NP	121-3-120	
NP	157-5-53-75	
	Lewis	
P	62-5-20831	8932
NP	62-110400-75	
NP		-213
NP		-225
NP		-302
NP	63-393-17	
NP	[REDACTED]	
NP	91-6591-107	b2

NUMEROUS REFERENCE

SEARCH S

Subj: James Franklin Powell

Supervisor _____ Room _____

R# 66 Date 10/22 Searcher Initial mm

Prod. _____

FILE NUMBER

SERIAL

Louis

NR [redacted] 522 ^{b6}_{b7c}

NR [redacted] -222

NR [redacted] 1, b2

NR [redacted] 20

NR [redacted] -220p9 ^{b6}_{b7c}

NR [redacted] 2 ^{b6}_{b7c}

NR [redacted] 2352

NR 01, 5, 7, 8, 26, 77

NR 101-2569-6

NR 31-69349-5 H. F. [redacted]

NR [redacted] 8 ^{b6}_{b7c}

NR [redacted] 9 ^{b6}_{b7c}

NR [redacted] 932

NR [redacted] 1353

NR [redacted] -3562p27

NR [redacted] -3226p18

NR [redacted] 10

NR [redacted] -1 ^{b6}_{b7c}

NR [redacted] 5 ^{b6}_{b7c}

NR 102-473-41

NR 100-3 [redacted] 6-738

NR 91-343-109 ^{b6}_{b7c}

* NR [redacted] -2987 ^{b6}_{b7c}

NUMEROUS REFERENCE

SEARCH S

Subj: James Franklin Powell

Supervisor _____ Room _____

R# 66 Date 10/27 Searcher Initial mm

Prod. _____

FILE NUMBER

SERIAL

Louis F.

NR [redacted] -1127 ^{b6}_{b7c}

NR Louis

NR 62-110400-6 EP3

NR sum 6/29/65

NR 100-16 sub 32-22

NR [redacted] -394

NR 58-3242-240

NR [redacted] 3

NR [redacted] 3

NR [redacted] -359 p16

NR [redacted] -2

NR [redacted] -2

NR [redacted] -19

NR [redacted] -175

NR [redacted] -1

NR 100-435030-4

NR [redacted] 9

NR [redacted] 6

NR [redacted] -11 p 20.

NR [redacted] -1

NR [redacted] 46 p 14

NR [redacted] -1

* NR [redacted] -183 p 9, 10, 49

10/24/71

PLAINTEXT

TELETYPE

URGENT

TO SACS WASHINGTON FIELD
NEWARK
SAN FRANCISCO
NEW YORK
BOSTON

PERSONAL ATTENTION

FROM DIRECTOR FBI

bg/btc

*8
742*

[REDACTED] AKA, DAPLI, JUSTICE, SUPREME COURT OF THE UNITED STATES;

LEWIS FRANKLIN POWELL, JR., DAPLI, JUSTICE, SUPREME COURT OF THE UNITED STATES; BUDED BOTH CASES, NOON, WEDNESDAY, NEXT. NO DELAY WILL BE TOLERATED.

INFORMATION RECENT PRESS ITEMS INDICATES FOLLOWING MAY HAVE PERTINENT COMMENTS RE ABOVE CANDIDATES' QUALIFICATIONS. INTERVIEW PROVIDED NOTHING YOUR FILES TO PRECLUDE SUCH INTERVIEW.

WASHINGTON FIELD: [REDACTED] AND [REDACTED]

[REDACTED] RESEARCH PROJECT ACTION COUNCIL.

NEWARK: PROFESSOR [REDACTED] PRINCETON UNIVERSITY.

SAN FRANCISCO: [REDACTED] STANFORD UNIVERSITY.

BOSTON: PROFESSOR [REDACTED] HARVARD UNIVERSITY.

*bg
b7c*

77-121928-3

NOT RECORDED
43 OCT 28 1971

JAR:mjf
(5)

60 NOV 3 1971

DUPLICATE YELLOW OF
WIRE TRANSMITTED

55
77-106904
ORIGINAL FILED IN

WILLIAM HUBBS REHNQUIST

b6
b7c

NEW YORK: PROFESSOR [REDACTED] ASSOCIATE PROFESSOR
[REDACTED] COLUMBIA UNIVERSITY.

WASHINGTON FIELD ALSO INTERVIEW REPRESENTATIVE NUMBER
OF CONGRESSIONAL MEMBERS MAKING UP "BLACK CAUCUS."

SA
9/

The Attorney General

October 29, 1971

Director, FBI

LEWIS FRANKLIN POWELL, JR.

**JUSTICES
SUPREME COURT OF THE UNITED STATES**

bg/btc

J
eth

The "Washington Post" on October 29, 1971, on page A1 carried an article captioned "FBI Queries Possible Opponents of Two Supreme Court Nominees." This article indicates that certain individuals interviewed during the course of the investigation of the captioned individuals were asked "whether they plan to fight the confirmations."

This is to advise that the Agents who conducted the interviews of these individuals have been contacted and deny that at any time did they ask whether the person being interviewed planned to fight the confirmations or planned to testify against the nominees.

77-
A

1 - The Deputy Attorney General

✓

OFL:bsh:dlb

-5-

Note: See memo Cleveland to Rosen, 10-29-71, same caption, JAR:bsh

Red

- Tolson _____
- Felt _____
- Rosen _____
- Mohr _____
- Bishop _____
- Miller, E.S. _____
- Callahan _____
- Casper _____
- Conrad _____
- Dalbey _____
- Cleveland _____
- Ponder _____
- Bates _____
- Tavel _____
- Walters _____
- Scott _____
- Tele. Room _____

MAILED 2
OCT 29 1971
FBI

EX-112
REC 43
77-12192-4

20 NOV 1 1971

NOV 2 1971
NOV 1971

TELETYPE UNIT

UNRECORDED COPY FILED IN 62-27585-585

UNITED STATES GOVERNMENT

Memorandum

Tolson	_____
Felt	_____
Rosen	_____
Mohr	_____
Bishop	_____
Malone	_____
E.S.	_____
Callahan	_____
Casper	_____
Conrad	_____
Dalbey	_____
Cleveland	_____
Ponder	_____
Bates	_____
Tavel	_____
Walters	_____
Soyars	_____
Tele. Room	_____
Holmes	_____

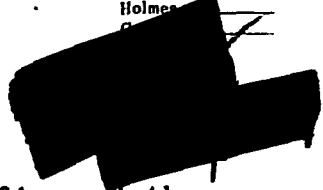
TO : Mr. Cleveland *VC*

DATE: 11/4/71

FROM : L. H. Martin *11/11*

SUBJECT: INTERNAL REVENUE SERVICE CHECKS
ON NOMINEES TO THE SUPREME COURT
OF THE UNITED STATES

*bc
b7c*



ORIGINAL FILED IN 62-17909-1043

As you are aware on Saturday, 10/16/71, the Office of the Deputy Attorney General (DAG) requested expedite investigations of [redacted] and [redacted]. These investigations were completed and reports were furnished to the DAG on Thursday, 10/21/71.

*bc
b7c*

On Friday, 10/22/71, the DAG requested investigations on [redacted] and Louis Franklin Powell. The investigations were completed and reports furnished to the DAG on Thursday, 10/28/71.

LEWIS FRANKLIN POWELL

As part of our investigation of the four individuals it was necessary to check their tax returns through the Internal Revenue Service (IRS). In this connection, the Special Agent in Charge (SAC) of the Washington Field Office in attached airtel has pointed out that personnel of the IRS performed an outstanding service in expeditiously securing the appropriate data concerning these individuals.

In particular the SAC, Washington Field has singled out [redacted] Disclosure and Liaison Branch, Collection Division, Office of the Assistant Commissioner (Compliance), IRS, U. S. Department of the Treasury, who personally took charge of securing the necessary data.

*bc
b7c*

The SAC, Washington Field suggested the Director may desire to send a letter to the Commissioner of IRS for the splendid effort of Mr. [redacted] and his staff.

77-121928-5

The Special Investigative Division concurs in this opinion.

NOT RECORDED
120 NOV 17 1971

RECORDED

ACTION:

NOV 18 1971

Attached for approval is a suggested letter along these lines.

- 1 - Mr. Rosen
- 1 - Mr. Mohr *338*
- 1 - Mr. Bishop

- 1 - Mr. Cleveland
- 1 - Mr. Martin
- 1 - Mr. [redacted]
- 1 - Mr. [redacted]

Spec. Inv. bc b7c

RBL: bsh
NOV 23 1971

3/ Enclosures *sent 11-5-71*

UNITED STATES GOVERNMENT

Memorandum

Tolson	_____
Felt	_____
Rosen	_____
Mohr	_____
Bishop	_____
Miller, E.S.	_____
Callahan	_____
Casper	_____
Conrad	_____
Dalbey	_____
Cleveland	_____
Ponder	_____
Bates	_____
Tavel	_____
Walters	_____
Soyars	_____
Tele. Room	_____
Holmes	_____
Gandy	_____

TO : Mr. Cleveland *[initials]*

DATE: 10/21/71

FROM : L. H. Martin *[initials]*

SUBJECT: LEWIS FRANKLIN POWELL, JR.
DEPARTMENTAL APPLICANT
JUDGE

b6
b7C *[redacted]*
[redacted]

This memorandum sets forth information in Bureau files concerning Lewis Franklin Powell, Jr., who was nominated for the Supreme Court by President Nixon.

Powell was born on 9/19/07 at Suffolk, Virginia. He attended McGuire's University School of Richmond from 1921 until 1925 obtaining a B.S. degree. He received an LL.B degree in 1929 from Washington and Lee University and an LL.M degree from Harvard University in 1932. He married Josephine Bucker on 5/2/36. Powell served with the U. S. Air Force during World War II and was advanced to the rank of Colonel. Powell has held a number of important positions in the American Bar Association and in 1964, was elected president of the American Bar Association. He is presently associated with the Hunton, Williams, Gay, Powell, Gibson law firm, 700 East Main Street, Richmond, Virginia.

b6
b7C

It is noted that in March, 1964, one Dr. *[redacted]*, University of Michigan, addressed a Conference on National Organizations at Chicago, Illinois, during which he belittled the communist threat by referring to *[redacted]* and his statement that "There are only 8,000 communists in the United States, 1,500 of whom are planted FBI Agents." According to our source, *[redacted]*

b7D

Powell spoke to this group on the following day and, using Dr. *[redacted]* as his authority, allegedly repeated the *[redacted]* statement in his banquet address. It was recommended and approved that this matter be taken up with Powell by Inspector H. L. Edwards, who knew Powell personally, to determine the circumstances involved in this matter.

b6/b7C

In a personal letter to Inspector Edwards dated 4/9/64 Mr. Powell expressed surprise that anyone thought he was favorably impressed by Dr. *[redacted]* reference to the FBI. He went

b6/b7C

- 1 - Mr. Felt
- 1 - Mr. Rosen
- 1 - Mr. Mohr
- 1 - Mr. Bishop

- 1 - Administrative Review Unit
- Crime Records Division
- 1 - Mr. Dalbey
- 1 - Mr. Cleveland
- 1 - Mr. Martin

77-121928-6
NOT RECORDED

3 DEC 8 1971

CONTINUED - OVER

LHM:ctd

60 DEC 20 1971

3X

[Handwritten signature]

Memorandum to Mr. Cleveland
Re: Lewis Franklin Powell, Jr.

on, "I did 'ad lib' a reference to Dr. [redacted] statement about the 'maintenance of internal order.' I must have been too subtle for your informant as my intention was certainly not to compliment either Dr. [redacted] or imply in the slightest my approval of what he said. Instead, although my reference was extremely incidental, I intended to belittle what Mr. [redacted] had said."

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To the aforementioned two paragraphs the Director noted "Who is Dr. [redacted] & did we write him; Powell's explanation is certainly a weak one. H."

Powell was approved by the Director to be on the Advisory Committee for Extended Training Facilities at Quantico, Virginia, on 5/26/71. Members of this Committee have not been advised personally pending an exact date for opening of the Academy.

A check of the records of the Identification Division, FBI, on 10/21/71 indicates no records for Powell.

SAC, Moore, Richmond Division, advised on the evening of 10/21/71 he is personally acquainted with Lewis Franklin Powell, Jr., who has been an SAC contact in the Richmond office for a number of years. He considers Mr. Powell to be a learned attorney whose character and loyalty are above reproach. Mr. Powell is an avid admirer of the Director and the FBI, and SAC, Moore feels he would be a valued asset to the Supreme Court of the United States.

ACTION:

For information.

WVC
pas
R/S
JM
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POST
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UNITED STATES GOVERNMENT

Memorandum

Tolson	_____
Felt	_____
Rosen	_____
Mohr	_____
Bishop	_____
Walters	_____
Tele. Rm.	_____
Holmes	_____
Gandy	_____

TO : Mr. Cleveland *C/m*

DATE: 10-22-71

FROM : L. H. Martin *LHM*

SUBJECT: LOUIS FRANKLIN POWELL, JR.

[REDACTED]
SUPREME COURT NOMINEES

bc/b7c

[REDACTED]

At 3:30 p.m. today, 10-22-71, John Duffner, Executive Assistant to the Deputy Attorney General, advised that they desired expedite investigations of captioned individuals as Supreme Court nominees. He requested investigation be completed and results furnished to the Office of the Deputy Attorney General by the close of business Thursday, October 28, 1971.

These cases are being ordered to the field for immediate attention. Mr. Duffner advised that Powell and **[REDACTED]** have been informed concerning these investigations and that both of them are available for interview for the purpose of obtaining any additional background data required. The appropriate field offices are being instructed no neighborhood investigations are to be conducted without Bureau authority. The Senators from Virginia will be interviewed regarding Powell, and the Senators from Arizona will be interviewed since **[REDACTED]** practiced law there until 1969.

*bc
b7c*

ACTION:

For your information.

- 1 - Mr. Rosen
- 1 - Mr. Mohr
- 1 - Mr. Felt
- 1 - Mr. Bishop
- 1 - Mr. Cleveland
- 1 - Mr. Martin

LHM:mkr (7)

WVC
PLS
7

77-121928-7

NOT RECORDED

3 DEC 8 1971

60 DEC 10 1971
DEC 9 1971
XEROX

UNRECORDED COPY

77-106901-63

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE SAN FRANCISCO	OFFICE OF ORIGIN BUREAU	DATE 10/23/71	INVESTIGATIVE PERIOD 10/23/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY [REDACTED] <i>bc/b7c</i>	TYPED BY kah
		CHARACTER OF CASE DAPLI JUSTICE U. S. SUPREME COURT	

REFERENCE: Bureau telephone call of Supervisor [REDACTED] to San Francisco, 10/23/71.

bc/b7c

- RUC -

ENCLOSURE

TO BUREAU

Five (5) copies of a "San Francisco Chronicle" newspaper article concerning a speech the Applicant gave on 3/23/65.

d

ACCOMPLISHMENTS CLAIMED						<input type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES			
								PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO

APPROVED *R.E. G. Gharat* SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

COPIES MADE:

- 5 - Bureau (Enc. 5) (AMSD)
- 1 - San Francisco (77-NEW)

77-121928-8

NOT RECORDED

7 OCT 27 1971

ENCLOSURE
9 cc destroyed

Spec. Inv. I

Dissemination Record of Attached Report			
Agency		<i>one cc Deputy A.G.</i>	
Request Recd.			
Date Fwd.		<i>OCT 27 1971</i>	
How Fwd.		<i>6 DEC 10 1971</i>	
By			

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

bc/b7c

Report of:

[REDACTED]

Office: SAN FRANCISCO

Date:

10/23/71

Field Office File #:

77-NEW

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE
U. S. SUPREME COURT

Synopsis:

Applicant gave a speech in San Francisco on 3/23/65. No credit or police records located for Applicant.

- RUC -

DETAILS: AT SAN FRANCISCO, CALIFORNIA

On October 23, 1971, the newspaper libraries of the "San Francisco Chronicle" and "San Francisco Examiner" were reviewed, and the only information located pertinent to this investigation was an article in the "San Francisco Chronicle" of March 24, 1965, reporting a speech the Applicant had given on March 23, 1965, in San Francisco. A copy of this article is attached as an exhibit.

CREDIT AND POLICE RECORDS

On October 23, 1971, [REDACTED] Classifier, San Francisco Police Department, Bureau of Identification, advised he could not locate any record identifiable with the Applicant. *bc b7c*

The following investigation was conducted by SA [REDACTED]

bc b7c

On October 23, 1971, [REDACTED] Credit Bureau Metro, San Jose, California, which covers San Francisco, advised she could locate no record identifiable with the Applicant.

RAPS PUBLIC APATHY

Lawyer's Plea

MAR 24 1965

For Morality

A revival of public morality and decency in America was called for yesterday by the president of the American Bar Association.

Lewis F. Powell Jr. warned that the deterioration of law and order "is eroding the very foundation of our democracy."

His remarks were made to 250 lawyers and judges attending a combined luncheon meeting of the Bar Association of San Francisco and the Lawyers Club at the Sheraton-Palace Hotel.

"The crime rate is increasing five times faster than our population, and yet Americans, unless their immediate families are involved, are generally apathetic..." he said.

NEAR PARALYSIS

"In more and more cities, the public is warned to stay off downtown streets and stay out of parks after nightfall.

"But the surge of criminality is not confined to large cities alone. It is a national problem, and we are approaching paralysis in the first duty of government—the protection of a citizen's person and property."

He said there is a general lack of respect for the legal processes. The police are sometimes guilty, through ignorance or misplaced zeal, of creating this lack of respect he noted.

The misconduct of government officials, when uncovered, has "the gravest consequences."

"Even lawyers have some responsibility for this deterioration when they fail to defend the judicial process. It is one thing to criticize a de-



LEWIS F. POWELL JR.
Bar Association president

cision of the Supreme Court and quite another to criticize our system of law and order."

THE COLLEGE MOBS

He also blamed businessmen who knowingly violate anti-trust laws, labor leaders who break labor laws, and the "many individuals who flout the law by supporting gambling and pornography, violate traffic laws, or perjure themselves every year at income tax time."

Powell then turned his attention to those who use civil disobedience rather than the courts to challenge present laws.

"These groups declare that only just laws must be obeyed and each group will decide what is just. This philosophy, carried to its logical extreme, leads to anarchy.

"This, as you know well, has occurred on some college campuses."

ENCLOSURE

77-121928-8

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE NEW YORK	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/23 - 26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY [REDACTED]	TYPED BY bg b7c pfp
		CHARACTER OF CASE DAPLI JUSTICE SUPREME COURT OF THE UNITED STATES	

REFERENCE:

Bureau teletype to Richmond, 10/22/71.

- P -

LEADS:

NEW YORK

1. Verify membership, American Law Institute.
2. Continue attempts to interview racial leaders.

Handwritten: Page 9
University line 2
R-9

ACCOMPLISHMENTS CLAIMED					<input type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		
							PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO

APPROVED <i>[Signature]</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN SPACES BELOW	
COPIES MADE:		77-121928-9	
		NOT RECORDED	
		3 DEC 8 1971	

- ⑤ - Bureau (Encls. 20)
1 - New York (77-34527)

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ENCLOSURE

Dissemination Record of Attached Report			
Agency		one cc Deputy A.G.	
Request Recd.			
Date Fwd.		OCT 27 1971	
How Fwd.			
By		60 DEC 10 1971	

Notations	<i>[Signature]</i>
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UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

b6/b7c

Report of:

[REDACTED]

Office: New York, New York

Date:

10/26/71

Field Office File #:

77-34527

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE
SUPREME COURT OF THE UNITED STATES

Synopsis:

Associates, including lawyers, judges and business associate, comment favorably and recommend. Applicant is a member of The Association of the Bar of the City of New York and two clubs in New York City. Results of investigation regarding newspaper morgue, credit and arrest set forth.

- P -

ENCLOSURES:

Exhibit A:

Miscellaneous newspaper clippings
obtained from the "New York Times".

NY 77-34527

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ARREST	10
MISCELLANEOUS	11

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DETAILS:

Associates

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On October 26, 1971, [REDACTED] White and Case, 14 Wall Street, New York City, New York, advised SA [REDACTED] that he has known LEWIS FRANKLIN POWELL, JR., since approximately 1950, having met him in connection with work for the American Bar Association (ABA). [REDACTED] is [REDACTED] and POWELL according to [REDACTED] held the position of President of the ABA from 1964 to 1965. POWELL is presently a partner with the law firm of Hunton, Williams, Gay, Powell and Gibson and has been associated with this firm for many years in Richmond, Virginia. POWELL's credentials and experience in the field of law are very impressive and he is a knowledgeable, intelligent, well rounded individual who is highly regarded by his professional associates. His opinion is sought after and highly regarded in questions concerning legal matters. POWELL is a member of a number of professional organizations including the ABA, the American College of Trial Lawyers (ACTL), the American Bar Foundation (ABF), the Association of the Bar of the City of New York, the Century Club and the University Club, which clubs are located in New York City, New York. POWELL has served as president of the ACTL and the ABF. POWELL has written a number of articles and given numerous speeches in connection with his membership with these organizations.

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In discussing POWELL's stand on civil rights and racial matters, [REDACTED] advised that POWELL is fair and unbiased and is they type of individual who deals with everyone on an equal basis regardless of ethnic background or religious beliefs. He pointed out that POWELL, while president of the ABA, supported the Office of Economic Opportunity's program for legal aid to the poor and POWELL's support was instrumental in having this program accepted. He also advised that POWELL served on the President's Commission on Law

NY 77-34527

Enforcement and the Administration of Justice during the JOHNSON Administration.

He described POWELL as being a quiet, firm, sensible individual and a clear thinking, levelheaded man of excellent judicial temperament. He knew nothing of a derogatory nature concerning POWELL or any member of his family. He further advised that POWELL is a completely honest and loyal American citizen of the highest character and associates. [REDACTED] stated that he was aware of the position for which POWELL was being considered and on the basis of POWELL's background, qualifications, ability and experience, [REDACTED] stated that POWELL would be his first choice for this position. He endorsed POWELL without reservation.

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On October 26, 1971, Mr. [REDACTED] Simpson, Thatcher and Bartlett, 1 Battery Place, New York, New York, advised SA [REDACTED] that he has known LEWIS POWELL from fifteen to twenty years through their activities in professional organizations and as a personal friend. He stated that he [REDACTED] was [REDACTED]

[REDACTED] and that POWELL subsequently served in the same capacities in those groups. He said that he has served on a number of committees with POWELL and has had ample opportunity to observe his legal ability, temperament and qualifications for a Justice of the Supreme Court and that he can think of no one better qualified for such a position. He stated POWELL is an outstanding lawyer who enjoys an excellent reputation among his professional colleagues, that his integrity, character, associates and loyalty to the United States are above reproach and that he is an even tempered, calm, fair minded individual who naturally conducts himself in a manner fitting a Justice in the Supreme Court. In regard to POWELL's attitude toward civil rights, he stated that POWELL is

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a "moderate" who is devoted to upholding the Constitution of the United States and that he knows of no prejudices that POWELL has concerning race or religion. He said he has no knowledge of any organization to which POWELL belongs that has restrictions in regard to race or religion. Mr. [REDACTED] stated he has advocated POWELL's appointment as a Judge for several years and is pleased to recommend him, confident that he will perform his duties in an excellent manner.

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On October 26, 1971, Mr. [REDACTED]

[REDACTED] Forey Square, New York, New York, advised SA [REDACTED] that he met Mr. POWELL on one occasion but has observed him at professional meetings on a number of occasions. He said that he has had no direct dealings with him, but based on his reputation and his observations of POWELL's behavior, he believes that he is well qualified for the position of Justice of the Supreme Court.

On October 26, 1971, [REDACTED]
[REDACTED] United States Court of Appeals, New York, New York,
advised SA [REDACTED] that he has known POWELL for
approximately 7 years and at one time worked closely with
him. He stated that POWELL is a first-rate individual in
every respect. He stated that he is a man of integrity and
is considered to be an excellent attorney. He mentioned
that he possesses the proper judicial temperament necessary
to sit on the Supreme Court and stated that he is courteous
to all, even to those with whom he may disagree.

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Judge [REDACTED] mentioned that POWELL is fair minded
in everything, including civil rights, and he could not think
of a better appointment to the Supreme Court. He mentioned
that he knew absolutely nothing unfavorable concerning
POWELL and would give him his highest recommendation.

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NY 77-34527

On October 26, 1971, [REDACTED] b6
[REDACTED] General Motors Corporation, 707 Fifth b7C
Avenue, New York City, advised he has known POWELL for over
forty years, having been a classmate of his at Washington
and Lee. He stated he felt it would be difficult for him
to be really objective about POWELL because he knew him too
well and was too close to him. He stated however, that he
felt POWELL to be eminently qualified for a seat on the
Supreme Court, that he was a person of great emotional
stability and one of the top five or ten citizens and
lawyers in the United States. He stated he felt him to
be a person of outstanding character, associates, reputation,
and a loyal American citizen whom he could give his highest
recommendation. He stated he knew nothing concerning the
applicant's personal or professional life that might reasonably
become a source of embarrassment to the Administration. He
stated he knew nothing of a derogatory nature concerning him.

Mr. [REDACTED]
United Virginia Bank, Richmond, Virginia, telephonically
contacted the New York Office of the Federal Bureau of
Investigation, on October 26, 1971, and advised that b6
he has been personally acquainted with and associated b7C
with LEWIS POWELL since the latter has been seven years of
age. He stated that he, [REDACTED]

[REDACTED]
According to Mr. [REDACTED]

He stated further that he looks upon POWELL as one
"of the great Americans" who is completely unbiased in his
opinions, highly intelligent, a gentleman of sound
judgement and one who possesses the necessary judicial
temperament for a position on the Supreme Court of the
United States. He recommends him without hesitation for
such a distinguished position as Justice of the Supreme
Court.

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On October 26, 1971, Judge [REDACTED], retired, United States Court of Appeals, For The Second Circuit, advised SA [REDACTED] that he has known LEWIS FRANKLIN POWELL, JR. for more than 20 years. He stated that POWELL is an excellent selection to the Supreme Court of the United States as he possesses good judicial temperament and has a keen legal mind. Judge [REDACTED] said that POWELL has his unqualified endorsement.

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Bar Associations

On October 26, 1971, Mr. [REDACTED] The Association of the Bar of the City of New York, advised SA [REDACTED] JR. that LEWIS F. POWELL, JR. has been a member of this association since 1955.

Mr. [REDACTED] advised he has known POWELL both professionally and socially for 25 years and considers him to be a thoughtful, deliberate individual and a fine attorney with an extensive knowledge of the law and an avid interest in the law. He stated he considers POWELL to be an individual of excellent character, associates, reputation, loyalty and a man of moderate and gentlemanly personal habits, and one he could recommend as the Justice of the United States Supreme Court as a fair minded and objective individual. Mr. [REDACTED] stated in his opinion POWELL is a man of integrity and courtesy and the possessor of the judicial temperament necessary for the Supreme Court.

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The following individuals advised SA [REDACTED] on October 26, 1971, that their respective agencies contain no information concerning LEWIS F. POWELL, JR.:

[REDACTED]
New York State Supreme Court
Appellate Division
First Judicial Department
25th Street and Madison Avenue
New York, New York

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[REDACTED]
New York State Supreme Court
Appellate Division
Second Judicial Department
45 Monroe Place
Brooklyn, New York

NY 77-34527

Miss [REDACTED] Receptionist
Committee on Grievances
Association of the Bar of the City of New York
36 West 44th Street
New York, New York

Membership

On October 26, 1971, [REDACTED]
[REDACTED] Century Club, 7 West 43rd Street, New
York, New York, advised SA [REDACTED] that LEWIS F. POWELL,
JR. has been a club member since 1963 and presently is a
non-resident member in good standing. Mr. [REDACTED] stated
because Mr. POWELL resides in Richmond, Virginia, he is
not eligible to hold an office in the club and to his
knowledge never has held an office in the organization.

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On October 26, 1971, [REDACTED]
[REDACTED] Bookkeeping Office, Univeristy Club, 1 West
54th Street, New York, New York, advised SA [REDACTED]
that LEWIS F. POWELL, JR. is presently a non-resident
member in good standing and resides in Richmond, Virginia.
Mr. POWELL does not presently hold an office in the club
and has not held an office in the past.

Newspaper Morgue

On October 26, 1971, SA [REDACTED]
reviewed the records of the "New York Times" Morgue,
229 West 43rd Street, New York, New York. The file
for the applicant contained nothing of a pertinent
nature. A few articles concerning the applicant are
attached as exhibits to this report.

NY 77-34527

Racial Leaders

Mr. [REDACTED] Eastern Region, National Urban League, 55 East 52nd Street, New York, New York, advised on October 26, 1971, that he does not know POWELL. He stated the only knowledge he has concerning the applicant comes from what he has read in the news media. He stated POWELL appears to have an outstanding legal record and should be an asset to the Supreme Court of the United States.

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Credit

On October 26, 1971, Miss [REDACTED] Clerk, Credit Bureau of Greater New York, New York, New York, advised SA [REDACTED] that her records reflect that POWELL, born September 19, 1907, had been included in their records since 1962. The files contain nothing of an unfavorable nature, no suits, judgments, liens or bankruptcy for the applicant.

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Arrest

On October 26, 1971, SA [REDACTED] caused the records of the New York City Police Department (NYCPD) to be checked by Deputy Inspector [REDACTED] Bureau of Criminal Identification; [REDACTED] Patrolman [REDACTED], Information Unit, and Lieutenant [REDACTED] Old Record Room. No record was located for the applicant or relatives.

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NY 77-34527

Miscellaneous

On October 26, 1971, a representative of the B'Nai B'Rith Anti-Defamation League, 315 Lexington Avenue, New York, New York, stated the New York Office of the Anti-Defamation League had no knowledge concerning inquiry on their part concerning the applicant.

On October 26, 1971, Inspector [REDACTED] Intelligence Division, Security and Investigation Section, NYCPD, advised SA [REDACTED] that he could locate no record for the applicant or relatives.

Mrs. [REDACTED] New York City, advised [REDACTED] and [REDACTED] of [REDACTED] are individuals of good character, associates, reputation and loyalty. She stated she knew nothing unfavorable regarding the family. Mrs. [REDACTED] added Mr. [REDACTED] is a [REDACTED] of the New York Securities Company, Incorporated, in New York City.

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By JOHN DARR OCT 22 1971

Lewis Franklin Powell Jr. could bring to the Supreme Court the Southern voice that President Nixon is looking for. But, assuming he is confirmed to the post he was named to last night, the Southern voice will have a soft and reasoning inflection that traces back to his native Tidewater Virginia. In manners and polish, Mr. Powell fits comfortably into the image of the antebellum South. But in the moderation of his ideas and his approach to integration, he appears to belong more to what has been called "the new South."

While serving a nine-year term on the school board of Richmond, he quietly admitted Negroes to white schools in 1959; while the issue raged in other Virginia towns, no schools closed in Richmond.

Mr. Powell, a Democrat, has never served on a court of law. He has, however, earned the reputation as a scholarly and courtly advocate, a reputation that gained him the presidency of three major legal associations: The American Bar Association (1964 to 1965), the American Bar Foundation (1969 to present), and the American College of Trial Lawyers (1969-1970).

Installed in August

He was installed as head of the A.B.A. in August. It was a time of growing alarm among lawyers and others at racial clashes and at what many considered an increasing disregard for law and order.

"There is no question," he said at the time "that we are in a period in our country when respect for law and order is at a low ebb."

As a member of President Johnson's Commission on Law Enforcement and Administration of Justice, he joined a dissenting group in declaring that recent Supreme Court decisions limiting police interrogation and confessions had tilted the balance of justice too far in favor of defendants.

A lawyer who is a friend of Mr. Powell noted that the 64-year-old lawyer recently wrote an article on law and order that J. Edgar Hoover liked so much that it was run in the latest issue of the F.B.I. Law Enforcement Bulletin.

In it, he labels as "sheer nonsense" the assertion that dissent and free speech are suppressed in America. "I know they read that in the White House," the friend remarked.

While openly and publicly shocked at the murder of three civil rights workers in Mississippi, he also believes that demonstrators go beyond their constitutional rights of free speech and petition "by occupying buildings and tying up traffic in the streets."

In speeches and testimony delivered while he was active with the bar association, Mr. Powell spoke out in favor of equal justice for the poor, against pre-trial publicity that jeopardizes the presumption of an accused person's innocence, and against "excessive tolerance" by parents, law officials and juries.

In 1964, he said that surveys had shown that "wealth, social position and race of clients may affect the standards of justice available." As a result, he said, "it is small wonder that the public at large should be less than enthusiastic about the administration of justice."

In 1966, he warned that "statements by overzealous or publicity-seeking police and prosecuting officials as to alleged confessions, incriminatory evidence, or to the effect that the case is 'open and shut' were jeopardizing the rights of the accused."

Following a trip to the Soviet Union in 1958, he inspired in Richmond a course on life under Communism—one of the first in American public schools anywhere—and classes in the Russian language. The experience led to an A.B.A. committee committee on Education Against Communism, where Mr. Powell, as a chairman, pushed a program to emphasize the advantages of free institutions. Mr. Powell was born in Suffolk, near Norfolk, on Sept. 19, 1907, and has lived most of his life in Richmond. He attended college and law school at Washington and Lee, in Lexington, Va., and earned a master's degree at Harvard Law School.

Since 1937, he has been associated in Richmond with one of Virginia's oldest law firms, Hunton, Williams, Gay, Powell & Gibson.

He and his wife, the former Josephine Pierce Rucker of Richmond, whom he married in 1936, have three daughters and one son.

By DAVID ROSENBAUM Special to The New York Times

WASHINGTON, Oct. 21— Early this week, William Hobbs Rehnquist, Assistant Attorney General, sent a memorandum to the American Bar Association defending Judge Mildred L. Lillie, who had been proposed to the association by President Nixon as a possible Supreme Court Justice. Tonight, Mr. Rehnquist, a conservative Arizonan, was himself nominated by Mr. Nixon for a seat on the Court.

It was only this afternoon that Mr. Rehnquist's name was even mentioned in speculation about the President's choices. But, in retrospect, observers here realize that he fit perfectly the President's job description.

He was described by his colleagues in the Justice Department as a brilliant lawyer who, having once been a clerk to the late Justice Robert H. Jackson, is completely versed in the Court's operations.

Politically, he is a Goldwater Republican, who came to Washington in 1968 at the beginning of the Nixon Administration to head the Justice Department's Office of Legal Counsel, a position described by the President tonight as "the President's lawyer's lawyer."

Among his associates in the Government, Mr. Rehnquist is known as a man more attuned to the law than to politics. He has gone out of his way, one colleague said, to participate in interviewing law graduates who are applying for jobs, and questions about the applicant's political affiliation seem unimportant.

Comes Under Fire

In his 33 months in the capital, Mr. Rehnquist has often been the spokesman for the Administration on police surveillance and other issues of criminal law.

In March, he came under fire from civil libertarians after he told a Senate subcommittee that he vigorously opposed any legislation that would restrict the Government's ability to gather information about American citizens. He also told Senator Sam J. Ervin Jr., the North Carolina Democrat who heads the Senate Constitutional Rights Subcommittee, that, although it would be "inappropriate" and a "waste of the taxpayers' money," it would not violate the Senator's rights for the Govern-

ment to put him under surveillance.

In a speech last year at the University of Arizona, Mr. Rehnquist said it would not be "at all unreasonable" for the Government to ask the Supreme Court to reverse its decision in the case of Miranda v. Arizona, when the Court declared that criminal suspects must be informed of such prerogatives as the right to remain silent and the right to a lawyer.

No litigant, including the Government of the United States, Mr. Rehnquist had said, was "required to accept any particular decision of the Supreme Court in the field of constitutional law as stare decisis." Stare decisis is the doctrine of strict adherence to prior judicial decisions.

Bill Rehnquist was born Oct. 1, 1924, in Milwaukee, and he attended public school there. He went West to college—to Stanford University, where he received his undergraduate and law degrees—and then came to Washington in 1952 to serve as a clerk to the late Justice Jackson.

Supporter of Goldwater

The next year he went to Phoenix, began private law practice and became active in Republican politics. He was a strong supporter of Barry Goldwater in the 1964 Presidential campaign.

Mr. Rehnquist is known as an exceptionally hard worker, and this morning his desk was piled high and his secretary said he was very busy. He is tall, long-side-burned and athletic-looking and he looks younger than his 47 years.

Mr. Rehnquist (pronounced WREN-quist) was married in 1953 to the former Natalio Cornell of San Diego. The couple has three children, James, 16, Janet, 14, and Nancy, 12, who attend schools in Fairfax County, Va., where the Rehnquists live.

Among his colleagues in the Justice Department, Mr. Rehnquist is respected first and foremost as a lawyer. President Nixon described him tonight as a conservative, "but only in a judicial, not in a political sense."

A close associate said afterward: "There's no question in my mind that he's a top-notch lawyer, both in his writing ability and his legal acumen. Plus, he's a hell of a nice guy who never blows up."

Lawyers Cancel Miami Dinners After Protests of Discrimination

By SIDNEY E. ZION

The American Bar Association has canceled two dinner parties scheduled at the Bath Club in Miami Beach during its annual meeting in August because the club does not admit Jews and Negroes to membership.

The action was taken by Lewis F. Powell Jr., president of the Bar Association, after a number of protests were made, including one by the American Jewish Committee.

Morris B. Abram, president of the A.J.C., praised the action as a "significant step" that could serve as a "lesson" to the Bath Club and other discriminatory membership practices representing

a luxury which few groups can afford.

Mr. Abram also serves as a United States representative on the United Nations Human Rights Commission.

The Bath Club is situated in the midst of Miami Beach's large Jewish community. It has never had a Jewish or Negro member.

The Bar Association had arranged for two functions at the club: its Distinguished Guests Dinner, described by Mr. Powell as "a small party to honor prominent participants in the annual meeting," and a dinner dance given by the Tax section of the association.

In a letter of protest to Mr. Powell on June 29, Mr. Abram said:

"It is rather late for an organization like the A.B.A. not to be fully aware of the reaction of minority group mem-

bers to discriminatory practices which bar them from access to places where only their Christian brethren are welcome."

In a reply to Mr. Abram this week, Mr. Powell defended the choice of the club, but said he had canceled the plans because,

"I cannot leave the association in a position where some might misinterpret its action regardless of the actual facts."

The facts, Mr. Powell said, were that the Bath Club had been used for similar functions in 1959 and that the guest list is determined solely by the Bar Association without regard to the club's discriminatory policies.

"Frankly it would never have occurred to me," Mr. Powell

wrote, "that there could be any possible question. But because there is the viewpoint expressed in your letter, I am deter-

mined to preserve the appearance as well as the substance of the association's historic position of non-discrimination."

Mr. Powell said it was "well" to have brought the issue into the open. He said he had received the first protest in March and that since Mr. Abram's letter he had received a "substantial number" of similar protests.

Yesterday, Representative Robert N. Giaino, Democrat of

Connecticut, sent a similar letter of protest to Mr. Powell.

An attempt to elicit some comment from the Bath Club leadership was rebuffed over the telephone with a gruff response: "no comment."

ENCLOSURE

77-121428-9

Bar Leader Finds High Court Too Lenient in Criminal Cases

Fears Recent Rulings Have Tipped Scales at Expense of the Public's Safety

By EDITH EVANS ASBURY

The president of the American Bar Association said yesterday that there was growing reason for the belief that recent Supreme Court decisions had tipped the scales of justice too far in favor of criminals at the expense of the public's safety.

As a result, Lewis F. Powell Jr., the A.B.A. president, said, "there are valid reasons for criminals to think that crime does pay, and that slow and fumbling justice may be evaded."

Mr. Powell, a Richmond attorney, addressed the annual meeting of the New York State Bar Association at the headquarters of the Association of the Bar of the City of New York, at 42 West 41st Street.

He cautioned that it was "unproductive and destructive to criticize the court itself" for performing its "historic function" of "protecting the constitutional rights of the individual against alleged unlawful acts of government."

However, the Supreme Court



The New York Times
Lewis F. Powell Jr.

decisions that have, in recent years, strengthened the rights of accused persons have rendered the task of law enforcement more difficult at a time when crime is increasing at an alarming rate, he said.

"The right of society in general, and of each individual in particular, to be protected from

Continued on Page 24, Column 4

NEW YORK TIMES, SAT

U.S. BAR PRESIDENT SCORES LENIENCY

Continued From Page 1, Col.

crime must never be subordinated to other rights," Mr. Powell asserted.

"There is a growing body of opinion that the rights of law-abiding citizens are being subordinated. Pending cases may have swung too far in favor of rights which are abused and misused by criminals."

Mr. Powell said there was a 10 per cent increase in crime in 1963 over the previous year and the trend continued in 1964 with a 13 per cent increase in the first nine months.

"The nature of the crimes committed is also disturbing," he continued, "with crimes of violence continuing to increase."

"The single most shocking statistic, documented in F.B.I. reports, is that since 1938 crime has been increasing five times faster than the population growth," he added.

Despite the annual cost in money and human misery, Mr. Powell said the American public seems apathetic about the crime situation.

"In a country which is said to stand on the threshold of the Great Society," Mr. Powell declared, it is incongruous that in some urban areas law-abiding citizens are unsafe in their homes and denied the privilege of using public streets and parks for fear of their personal safety.

We Must Act Now

This fear signifies a breakdown in the primary responsibility of government, which is "the duty to protect citizens in their persons and property from criminal conduct—whatever its source or cause," Mr. Powell said.

"Society cannot await the millennium when crime will relaying causes have been removed," Mr. Powell said. "We must act now."

A major program to develop national standards for the administration of criminal justice was undertaken recently by the A.B.A. under the chairmanship of Chief Judge J. Edward Lumbard of the United States Court of Appeals for the Second Circuit.

The project, expected to require three years and cost \$750,000 will consider "the entire spectrum of criminal justice," Mr. Powell said.

Another encouraging sign of attention to the problem of maintaining the proper balance between individual rights and the rights of the public, Mr. Powell said, is the new Office of Criminal Justice within the Department of Justice.

Also, he continued, Governor Rockefeller recently proposed "an imaginative anticrime program for New York," including a new penal code and a new school of criminal justice.

A number of other states are also re-examining their criminal codes, he said.

The State Bar Association elected Sidney B. Pfeifer of Buffalo, president, replacing Orison S. Marden of New York City. It also elected C. Everett Shults of Hornell as secretary and re-elected Robert C. Poskanzer of Albany treasurer.

Safety of Public Put First by Bar's Chief

By FRED P. GRAHAM
Special to The New York Times

MIAMI BEACH, Aug. 9—The president of the American Bar Association today placed the right of citizens to be free from criminal attack ahead of the constitutional rights of persons accused of crimes.

The statement by (Lewis F. Powell) of Richmond, Va., brought thunderous applause from the 3,000 lawyers at the initial session of the association's convention.

The delegates also applauded — an unusual informality at A.B.A. assemblies — when Mr. Powell criticized what he called the role of sit-in demonstrations in creating disrespect for law.

Mr. Powell also told the assembly that the association was planning to tighten its rules

Continued on Page 12, Column 3

PUBLIC SAFETY PUT FIRST BY BAR HEAD

Continued From Page 1, Col. 2

mittee, appointed to overhaul against lawyers making statements to the press about pending cases.

He said that a special committee, the association's outmoded canons, was halfway through its three-year project.

After having suggested that some sit-in demonstrations could create disrespect for law, Mr. Powell declared:

"An ordered society cannot exist if every man may determine which laws he will obey, and if techniques of coercion supplant due process," he said.

"The courts and legislative halls, rather than the streets, must be the places where differences are reconciled and individual rights ultimately protected."

Mr. Powell, who has earned a reputation as a progressive leader of the legal profession, listed three symptoms of "deteriorating law and order."

"The willful violation of laws and court decisions, sometimes by officials sworn to observe them.

"The doctrine that only 'just' laws need be obeyed and that every man is free to determine for himself the question of 'justness.'"

"The growing use of coercion — ranging from demonstrations to sit-ins and mobs in the streets — as a means of enforcing rights or political views."

Scores 'Defiant' Minority

Mr. Powell also criticized "the criminal conduct of the small and defiant minority in the South which still uses violence and intimidation to frustrate the legal rights of Negro citizens."

In ranking the protection of society above the constitutional safeguards of defendants when these conflict, Mr. Powell put his prestige behind the views expressed last week by Attorney General Nicholas deB. Katzenbach. In a letter to Chief Judge David L. Bazelon of the United States Court of Appeals for the District of Columbia, Mr. Katzenbach wrote that the purpose of criminal investigation must be law enforcement.

ENCLOSURE

77-12192-9

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE PITTSBURGH	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY [REDACTED] BG/b7C	TYPED BY nju
		CHARACTER OF CASE DAPLI JUSTICE, SUPREME COURT OF THE UNITED STATES	

REFERENCES:

Bureau teletype to Richmond, Et Al, 10/22/71.
 Washington Field teletype to the Bureau, Et Al,
 10/23/71.
 Bureau nitel to Richmond, Et Al, 10/24/71.
 Bureau teletype to Norfolk, Et Al., 10/25/71.
 Pittsburgh teletype to Bureau, 10/26/71.

-RUC-

ACCOMPLISHMENTS CLAIMED <input type="checkbox"/> NONE						ACQUIT-TALS	CASE HAS BEEN:	
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR	<input type="checkbox"/> YES <input type="checkbox"/> NO
							PENDING PROSECUTION OVER SIX MONTHS	<input type="checkbox"/> YES <input type="checkbox"/> NO
APPROVED ^{DDM} _{bst} SPECIAL AGENT IN CHARGE						DO NOT WRITE IN SPACES BELOW		
COPIES MADE: 5 Bureau 1 - Pittsburgh (77-8290)						77-121928-10 NOT RECORDED 22 OCT 28 1971		
Dissemination Record of Attached Report						Notations Spec. Inq.		
Agency	one cc Deputy A.G.							
Request Recd.								
Date Fwd.	OCT 27 1971							
How Fwd.								
By								

60 DEC 10 1971

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COVER PAGE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

b6/b7c

Report of:

Date:

[REDACTED]
10/26/71

Office: Pittsburgh, Pa.

Field Office File #:

77-8290

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE, SUPREME COURT
OF THE UNITED STATES

Synopsis:

Newspaper library, "Pittsburgh Press" and "Pittsburgh Post Gazette," contain only publicity regarding nomination of applicant to the Supreme Court Bench and editorial regarding his stand on the rights of the criminal versus citizen. No credit or arrest record for the applicant.

-RUC-

DETAILS:

Credit and Arrest

On October 26, 1971, [REDACTED] Identification Officer, Allegheny County Detective Bureau; JOSEPH WALLACE, Acting Chief, Identification Section, Pittsburgh Police Department, Pittsburgh, Pa., and [REDACTED] Credit Bureau, Inc., Pittsburgh, advised they have no record identifiable with the applicant.

b6
b7c

Miscellaneous

On October 26, 1971, Miss [REDACTED] Library, "Pittsburgh Press," daily newspaper, furnished clippings which contained no derogatory information and contained only information regarding applicant's nomination for a position on the Supreme Court and contains two editorials, as follows:

b6
b7c

Sunday newspaper, February 14, 1965, an editorial entitled "Criminal Vs. Citizen," stated POWELL, President of the American Bar Association, in a recent address, said the Supreme Court, in its efforts to protect civil rights, has swung too far in favor of the criminal at the expense of the safety of the public. He said, "There are valid reasons for criminals to think that crimes does pay and that slow and fumbling justice could be evaded. The right of society in general, and of each individual in particular to be protected from crime must never be subordinated to other rights."

An editorial which appeared August 13, 1965, revealed remarks by POWELL as a retiring president of the American Bar Association before the opening session of the American Bar Association in Miami. His remarks were, "There must be no lessening of concern for the constitutional rights of persons accused of crime. But the first and foremost priority today must be a like concern for the right of citizens to be free from criminal molestation of their person and property. Indeed, this is perhaps our most basic individual right. Unless this is adequately protected, society itself may become so disorganized that in the end all rights may be endangered."

b6/b7c

On October 26, 1971, [REDACTED] Library, "Post Gazette," pittsburgh daily newspaper, furnished clippings regarding the applicant, which contained no derogatory information and which contained publicity regarding his nomination for the Supreme Court Bench, also cited his remarks as set forth above; however, contained nothing additional.

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE SAN DIEGO	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA [REDACTED] b6/b7c	TYPED BY vkW
		CHARACTER OF CASE DEPARTMENTAL APPLICANT JUSTICE, SUPREME COURT OF THE UNITED STATES	

REFERENCES: Butte teletype to San Diego dated 10/26/71.

- RUC -

- A* -
COVER PAGE

ACCOMPLISHMENTS CLAIMED						<input type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN:					
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES			PENDING OVER ONE YEAR	<input type="checkbox"/> YES <input type="checkbox"/> NO				
								PENDING PROSECUTION OVER SIX MONTHS	<input type="checkbox"/> YES <input type="checkbox"/> NO				
APPROVED <i>[Signature]</i>				SPECIAL AGENT IN CHARGE		DO NOT WRITE IN SPACES BELOW							
COPIES MADE: ⑤-Bureau (AM) 1-San Diego (77-6812)				<i>9 cc [unclear]</i> <i>[unclear]</i>		77-	121928-11						
						NOT RECORDED 10 OCT 29 1971							
Dissemination Record of Attached Report				Notations		<i>Spec. Inq.</i>							
Agency	one cc Deputy A.G.												
Request Recd.													
Date Fwd.	OCT 27 1971												
How Fwd.													
By													

60 DEC 10 1971 COVER PAGE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:
Date:

SA [REDACTED] *bc/b7c*
October 26, 1971

Office: SAN DIEGO

Field Office File #:

San Diego 77-6812

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE,
SUPREME COURT OF UNITED
STATES

Synopsis:

[REDACTED] *bc/b7c*
Billings, Montana, interviewed San Diego, California; advised has been close professional associate of LEWIS FRANKLIN POWELL, JR. for 25 years. Recommends favorably without reservation.

- RUC -

DETAILS:AT SAN DIEGO, CALIFORNIA

[REDACTED] Billings, Montana, was interviewed at the United States District Court, San Diego, California, at which time he advised that he has been a close professional associate of LEWIS FRANKLIN POWELL, JR. for twenty five years. He characterized POWELL as a man of unblemished character, excellent reputation and associates and a loyal citizen of the United States of America. He declared that POWELL is eminently qualified as an attorney and that he would carry on the functions of a Justice of the Supreme Court of the United States in an exemplary manner. [REDACTED] *bc b7c*

SD 77-6812

bc/b7c
knew of no organizations to which POWELL belonged that were racially prejudiced and any decisions made by him regarding civil rights would be completely objective, and in accordance with the law. [REDACTED] advised that he would recommend POWELL for the position of Justice of the Supreme Court without reservation or qualification.

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE CINCINNATI	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY [REDACTED] bg/btc	TYPED BY blb
		CHARACTER OF CASE DEPARTMENTAL APPLICANT JUSTICE SUPREME COURT OF UNITED STATES	

REFERENCES:

Richmond teletype to Bureau dated 10/25/71.
 Richmond telephone call to Cincinnati 10/25/71.
 Cincinnati teletype to Bureau 10/26/71.

- RUC -

*Correction
P-1*

ACCOMPLISHMENTS CLAIMED						<input checked="" type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES			
								PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

APPROVED: *[Signature]*
 SPECIAL AGENT IN CHARGE

COPIES MADE:
 5-Bureau
 1-Cincinnati (77-7522)

2 ccs destroyed

DO NOT WRITE IN SPACES BELOW

77-121928-12

NOT RECORDED
 4 OCT 28 1971

[Signature]

Dissemination Record of Attached Report

Agency	one cc Deputy A.G.
Request Recd.	
Date Fwd.	OCT 27 1971
How Fwd.	
By	CODEC 101971

Notations

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:

Date:

[REDACTED] *bc/b7c*
10/26/71

Office: CINCINNATI

Field Office File #: 77-7522

Bureau File #:

Title: LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE
SUPREME COURT OF UNITED STATES

Synopsis:

Records DISCO, Columbus, Ohio, reveal POWELL issued Secret Clearance dated 5/24/63, clearance active, and Top Secret Clearance dated 9/30/68, clearance active.

- RUC -

DETAILS:

On October 26, 1971, Mrs. [REDACTED] *bc*
[REDACTED] Central Index Files, Defense Industrial *b7c*
Security Clearance Office (DISCO), Columbus, Ohio, advised that LEWIS FRANKLIN POWELL, JR., date of birth September 19, 1907, Social Security Account Number 223-05-6493, is issued the following two clearances:

Secret Clearance dated May 24, 1963, based on a National Agency check by Naval Investigative Service dated April 25, 1963. Clearance is active and the employing agency is Ethel Corporation, Gulf State Road, Baton Rouge, Louisiana;

Top Secret Clearance dated September 30, 1968, based on a background investigation by Office of Special Investigations, District 4, dated September 26, 1968. Clearance is active and the employing agency is C and P Telephone Company, 703 East Grace, Street, Richmond, Virginia.

- 1* -

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE COLUMBIA	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/25/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA [REDACTED] <i>b6 b7C</i>	TYPED BY nmb
CHARACTER OF CASE DAPLI - JUSTICE, SUPREME COURT OF THE UNITED STATES			

REFERENCES: Bureau teletype to Richmond, etal, 10/22/71.
WFO teletype to Bureau 10/23/71.
Bureau teletype to Richmond 10/24/71.
Bureau teletype to Norfolk 10/25/71.

- RUC -

ACCOMPLISHMENTS CLAIMED						<input type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN: PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES			

APPROVED *Twl.* SPECIAL AGENT IN CHARGE

COPIES MADE:
(5) Bureau
1-Columbia (77-1214)

2 cc [unclear]

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77-121928-13

NOT RECORDED
OCT 28 1971

RECEIVED FBI
Spec Ind.

Dissemination Record of Attached Report

Agency	Request Recd.	Date Fwd.	How Fwd.	By
		OCT 27 1971	CODEC 1 01971	

**UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**

Copy to:

bc/b7c

Report of: SA [REDACTED] Office: COLUMBIA
 Date: October 26, 1971
 Field Office File #: 77-1214 Bureau File #:
 Title: LEWIS FRANKLIN POWELL, JR.

Character: DEPARTMENTAL APPLICANT -
 JUSTICE, SUPREME COURT OF THE UNITED STATES

Synopsis: Attorney [REDACTED] United States
 District Judge [REDACTED] and [REDACTED]
 [REDACTED] highly recommended POWELL
 for the Supreme Court of the United States

*bc
b7c*

- RUC -

DETAILS:

Attorney [REDACTED]
 law firm of Robinson, McFadden, Moore and Pope,
 Jefferson Square advised that he was formerly located at
 1213 Lady Street, Columbia, South Carolina. [REDACTED]
 stated he has known POWELL since about 1946, having met
 him through their membership and activities in the
 American Bar Association. He has been associated with
 members of POWELL's law firm in litigation and he has
 formerly worked very closely with POWELL when [REDACTED]
 was a member of the Board of Regents of the American
 College of Trial Lawyers when POWELL was president of
 this organization.

*bc
b7c*

About two years ago he wrote a letter to the
 United States Attorney General highly endorsing POWELL
 for the Supreme Court of the United States.

As far as he knows, POWELL is in excellent
 health and his character, loyalty, reputation, and
 associates are above reproach. He knows of no racially
 prejudiced organizations to which POWELL belongs and as
 far as he knows, POWELL's leanings towards Civil Rights
 are in complete accordance with the law. He feels that

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

CO 77-1214

POWELL is eminently qualified and has the necessary ability and judicial temperament to be an outstanding Justice of the Supreme Court of the United States. He last talked with POWELL over the telephone about two weeks ago. He is also acquainted with [REDACTED] and considers her to be a very charming lady.

b6
b7C

United States District Judge [REDACTED] advised that he has known POWELL since 1925 when they were undergraduate students and attended classes together at Washington and Lee University, Lexington, Virginia. They attended all classes together in law school at this university. POWELL was a brilliant student and a person whose character, loyalty, reputation, and associates are above reproach.

He has seen POWELL about once a year at legal meetings since they were graduated from law school.

He has had no legal dealings with POWELL as a trial lawyer but he knows POWELL has an excellent reputation in the legal profession.

He is not acquainted with all organizations to which POWELL belongs but he knows of no membership in a racially prejudiced organization.

As far as he knows, POWELL's leanings toward Civil Rights are in complete accord with the law.

Judge [REDACTED] advised that he would highly recommend POWELL as a Justice for the Supreme Court of the United States as he appears to have the necessary judicial ability and temperament for such a position.

b6
b7C

CO 77-1214

JCW:rat

1

The following investigation was conducted by SA [REDACTED] on October 25, 1971, at Greenville, South Carolina:

b6
b7c

Mr. [REDACTED] of the Fourth Federal Circuit Court of Appeals, was interviewed and furnished the following information:

[REDACTED] has been acquainted with Mr. POWELL for more than 20 years. POWELL and members of his firm in Richmond, Virginia, have frequently appeared in his court. POWELL is a very able and highly respected attorney of outstanding character and reputation.

b6
b7c

While [REDACTED] had no specific information concerning the feelings of Mr. POWELL on civil rights matters, he expressed confidence in his fairness and impartiality to all groups. He recalled that POWELL was chairman of the Richmond, Virginia, School Board in the early 1960's, and it was generally felt that POWELL did a creditable job in keeping the Richmond schools open during those trying days. He had no information indicating that Mr. POWELL has ever been a member or affiliated with any unpatriotic or subversive group. He stated he feels that POWELL is an excellent choice for the court, and recommends him most highly.

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE HOUSTON	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/25/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA [REDACTED] <i>bc b7c</i>	TYPED BY yk
		CHARACTER OF CASE DAPLI JUSTICE SUPREME COURT OF UNITED STATES	

REFERENCE: Richmond tel to Bu, 10/25/71.

- RUC -

ACCOMPLISHMENTS CLAIMED <input checked="" type="checkbox"/> NONE						ACQUIT-TALS	CASE HAS BEEN:		
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
								PENDING PROSECUTION OVER SIX MONTHS	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
APPROVED <i>[Signature]</i>			SPECIAL AGENT IN CHARGE			DO NOT WRITE IN SPACES BELOW			
COPIES MADE:			<i>5 cc destroyed</i>			77-121928-14			
5 - Bureau (AM)						NOT RECORDED			
1 - Houston (77-5958)						OCT 28 1971			
Dissemination Record of Attached Report						RECEIVED FBI			
Agency	one cc Deputy A.G.					Notations <i>[Signature]</i>			
Request Recd.									
Date Fwd.	OCT 27 1971								
How Fwd.									
By									

DEC 10 1971

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COVER PAGE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:

SA [REDACTED] b6

Office:

Houston

Date:

10/26/71 b7c

Field Office File #:

Houston 77-5958

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE
SUPREME COURT OF UNITED STATES

Synopsis:

[REDACTED] American Bar Association,
Houston, Texas, recommends Mr. POWELL. b6
b7c

- RUC -

DETAILS:

On October 25, 1971, [REDACTED] Attorney, 800 Bank of the Southwest Building, Houston, Texas, advised he is currently [REDACTED] American Bar Association. He stated he has been well acquainted with LEWIS FRANKLIN POWELL, JR., for about fifteen years. Their association has been through contacts and activities of the American Bar Association, the Commission on Law Enforcement and Administration of Criminal Justice, the American College of Trial Lawyers, as well as through having handled legal matters together. b6
b7c

Mr. [REDACTED] stated he feels that he is fully aware of POWELL's professional qualifications and that he also has a basis for an evaluation of POWELL's personal life. He stated he would recommend POWELL without hesitation as to his intelligence, legal experience, and education, as well as to his judicial ability and temperament. He stated he had no knowledge that POWELL might be a member of or might be associated with any groups which would indicate that he was racially prejudiced. He feels that POWELL is a legal scholar who would be fair in interpreting the law with regard to civil rights matters. He concluded that he could think of no area of his knowledge concerning POWELL which might cause him to hesitate in the least in readily recommending him for this position.

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE DALLAS	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY [REDACTED]	TYPED BY kch
		CHARACTER OF CASE DEPARTMENTAL APPLICANT JUSTICE U. S. SUPREME COURT	

REFERENCES: Houston nitel to Bureau dated 10/25/71.
Houston telephone call to Dallas dated 10/26/71.
Dallas facsimile to Bureau dated 10/26/71.

- RUC -

Correction
B-1

ACCOMPLISHMENTS CLAIMED						<input type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES			
								PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO
								PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO

APPROVED: *[Signature]* SPECIAL AGENT IN CHARGE

COPIES MADE:
 5 - Bureau (AMSD)
 1 - Dallas (77-7702)

2 cc destroyed

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77-121728-15

NOT RECORDED
18 OCT 28 1971

Spec. Inq.

Agency	Request Recd.	Date Fwd.	How Fwd.	By
		OCT 27 1971		

50 DEC 10 1971

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COVER PAGE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:

[REDACTED]

*bc
b7c*

Office: Dallas, Texas

Date:

10/26/71

Field Office File #:

77-7702

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE

~~U. S. SUPREME COURT~~

Supreme Court of the United States

Synopsis:

Associate recommends.

- RUC -

DETAILS:

ASSOCIATE

AT DALLAS, TEXAS

On October 26, 1971, [REDACTED] Dallas, advised he has known LEWIS FRANKLIN POWELL, JR., for 30 years and has known him intimately for 25 years. Mr. [REDACTED] stated he has been associated with POWELL in the American Bar Association and on the National Crime Commission. [REDACTED] feels that POWELL is one of the top attorneys in the United States and will make an outstanding judge. He is devoted to his profession and analyzes facts of a case. POWELL is an excellent writer, is industrious, and extremely competent. [REDACTED] feels his character, morals, associates, and loyalty are above reproach and highly recommends him for a position of trust and confidence.

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Mr. [REDACTED] stated he has previously furnished the above information by letter to President NIXON with copies to Attorney General MITCHELL.

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FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE LITTLE ROCK	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA [REDACTED] <i>bg b7c</i>	TYPED BY dlg
		CHARACTER OF CASE DEPARTMENTAL APPLICANT JUSTICE SUPREME COURT OF UNITED STATES	

REFERENCE:

Richmond tel to Director, 10/25/71.

-RUC-

*Disseminated
via LHM
10/28/71*

ACCOMPLISHMENTS CLAIMED none						ACQUIT- TALS	CASE HAS BEEN:	
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
							PENDING PROSECUTION OVER SIX MONTHS	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

APPROVED *[Signature]* SPECIAL AGENT IN CHARGE

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1-Little Rock (77-2540)

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77-121928-16

NOT RECORDED
4 OCT 28 1971

Dissemination Record of Attached Report			
Agency			
Request Recd.		OCT 27 1971	
Date Fwd.			
How Fwd.			

Notations
Spec. Inv.

60 DEC 10 1971

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:

SA [REDACTED] ^{b6}
b7C

Office: LITTLE ROCK

Date:

OCTOBER 26, 1971

Field Office File #: 77-2540

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE
SUPREME COURT OF UNITED STATES

Synopsis:

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[REDACTED] attorney, Little Rock, Arkansas,
highly recommends applicant as qualified in all respect
including legal ability, moral character, and patriotism
for position considered.

-RUC-

DETAILS:

At Little Rock, Arkansas

[REDACTED] Wright,
Lindsey, and Jennings Law Firm, Worthen Bank Building,
advised October 26, 1971, as follows:

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He has known LEWIS FRANKLIN POWELL, JR. intimately for the past twenty-five years. Mr. [REDACTED] American Bar Association and has had many years association with Mr. POWELL in this organization. He considers Mr. POWELL as one of the greatest living Americans by any standards, including legal qualifications, moral character, and patriotism. Mr. [REDACTED] was closely associated with Mr. POWELL at the time Mr. POWELL was president of the American Bar Association and Mr. [REDACTED] in this organization. Mr. [REDACTED] has been present to personally witness Mr. POWELL being a spokesman before Congressional Committees and in making other public speeches. He is an exquisite gentleman, mild mannered, and reasonable in his attitude. Mr. POWELL approaches all controversial matters in a conciliatory spirit. He is exceptionally well qualified by breeding, education, and experience to be a Supreme Court Justice.

Mr. [REDACTED] noted Mr. POWELL was a pioneer in having the American Bar Association establish a program for furnishing to schools basic textbooks on communism and its dangers. If you had to label Mr. POWELL it would be as a conservative, meaning he does not believe in extremism and supports moderation in all matters.

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As far as Mr. POWELL's opinions in racial matters, Mr. [REDACTED] pointed out in all his association with Mr. POWELL, he has never heard him speak of a member of the Negro race in a derogatory manner. Mr. POWELL is a past President of the Richmond, Virginia, School Board and held this position when the courts required that school system to be desegregated. As President of the Board, Mr. POWELL insisted on peaceful integration. He is not known to belong to any racially prejudiced organizations.

Mr. POWELL has an excellent command of the English language and is a competent writer.

Mr. [REDACTED] stated he would recommend Mr. POWELL without any reservations for the position of United States Supreme Court Justice.

It is noted Mr. [REDACTED] describes his own political affiliation as that of an Independent Democrat.

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE MOBILE	OFFICE OF ORIGIN MOBILE	DATE 10/26/71	INVESTIGATIVE PERIOD 10/25-10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA [REDACTED] <i>bc b7c</i>	TYPED BY :alb
		CHARACTER OF CASE JUSTICE UNITED STATES SUPREME COURT DEPARTMENTAL APPLICANT	

REFERENCE: Bureau teletype, October 22, 1971

-RUC-

ACCOMPLISHMENTS CLAIMED <input checked="" type="checkbox"/> NONE						ACQUIT-TALS	CASE HAS BEEN:	
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
							PENDING PROSECUTION OVER SIX MONTHS	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
APPROVED <i>APES</i>			SPECIAL AGENT IN CHARGE			DO NOT WRITE IN SPACES BELOW		
COPIES MADE:			<i>Telex Copy TO DAG</i>			77-121928-17		
① - Bureau 1 - Mobile (77-2873)						NOT RECORDED		
Dissemination Record of Attached Report						Notations <div style="border: 1px solid black; padding: 5px; display: inline-block; transform: rotate(-15deg);"> RECEIVED FBI OCT 27 1971 </div>		
Agency	one cc Deputy A.G.							
Request Recd.								
Date Fwd.	60 DEC 01 1971							
How Fwd.								
By								

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UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:
Date:

SA [REDACTED]
OCTOBER 26, 1971

b6
b7C Office: MOBILE

Field Office File #:

MO 77-2873

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

JUSTICE
UNITED STATES SUPREME COURT
DEPARTMENTAL APPLICANT

Synopsis:

[REDACTED] Escambia County SO, Brewton, Ala., and [REDACTED] Brewton, Ala., advised they are well-acquainted with the [REDACTED] who reside [REDACTED] Brewton, Ala. Both stated they have known the [REDACTED] family five or six years during which time they have observed them to be honest, loyal and respectable people with good moral character. [REDACTED] Brewton, Alabama states he is acquainted with the [REDACTED] family who reside [REDACTED] Brewton, Ala., and has no reason to question their character, integrity or honesty. Identification checks at Escambia County SO and Brewton PD negative regarding [REDACTED] and wife, [REDACTED]. The Mobile Press-Register, a daily newspaper published in Mobile, Ala., reflects applicant spoke at meeting of the Southern Company at the Grand Hotel, Point Clear, Alabama (Baldwin County), October 5, 1967. No identification or credit record located Baldwin County, Alabama. Newspaper morgue of Montgomery Advertiser and Alabama Journal, Montgomery, Ala., negative.

-RUC-

DETAILS:

[REDACTED] Escambia County, Brewton, Alabama, advised October 25, 1971, he has known Mrs. [REDACTED] and husband, [REDACTED] who reside at [REDACTED] Brewton, Alabama, for the past five years. He stated the [REDACTED] family is well thought of, with good reputation and character.

MO 77-2873

[REDACTED] is employed T. R. Miller Mills, Brewton, Alabama, as [REDACTED] box factory.

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[REDACTED] Brewton, Alabama, advised October 26, 1971, he is well acquainted with [REDACTED] and wife, [REDACTED] who reside at [REDACTED] Brewton, Alabama. He stated he has known the [REDACTED] five or six years during which time he has observed them to be honest, loyal, moral, and respectable citizens of the Brewton community.

No identification records located for [REDACTED] or wife, [REDACTED] at Escambia County Sheriff's Office or Brewton Police Department.

[REDACTED] Brewton, Alabama, advised October 26, 1971, he is acquainted with the [REDACTED] who reside at [REDACTED] Brewton, Alabama. He stated he has never heard of any derogatory remarks concerning the [REDACTED] and therefore has no reason to question their integrity or character.

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Mrs. [REDACTED] Mobile Press-Register, a daily newspaper published at Mobile, Alabama, advised SA [REDACTED] on October 26, 1971, that according to their records, LEWIS F. POWELL, JR. was a speaker at the Grand Hotel, Point CLEAR, Baldwin County, Alabama, on October 27, 1967. According to the newspaper article, POWELL spoke to the Southern Company, an audience of some 160 electric utility executives and their guests, and the caption of the article was shown as "Condoning Defiance of Law Said Step to Anarchy." Mrs. [REDACTED] made available a copy of this article.

ing more than \$447 million in capital outlays, and, when completed, will provide some 18,600 new jobs.

strengthened with appropriate penalties provided, he continued.

The speaker told his audience of some 160 electric utility executives and their guests that laws, especially against those who engage in nonviolent civil disobedience, should be enforced uniformly and promptly.

"America needs to awaken to its peril; it needs to understand that our society and system can be destroyed. Indeed, this can and will happen here unless Americans develop a new impatience with those who incite and perpetrate civil disobedience; unless laws against violence are strengthened and enforced with vigor and impartiality; and unless we return once more to the orderly and democratic processes which alone can preserve our freedoms," he said.

The Southern Company and its affiliates began its top level meeting at the Grand Hotel on Wednesday and will continue through a luncheon program Sunday.

Presiding at the meeting is Harilee Branch Jr., president of The Southern Company.

The initial general business session began this morning with a welcome to the Mobile area by Mayor Arthur R. Outlaw.

The company has declared a quarterly dividend of 27 cents a share payable Dec. 6 to stockholders of record Nov. 6.

Branch said in the first nine months of this year plans have been announced for 331 new or expanded industries on the lines of the system companies involv-

MOBILE, PRICHARD, CHICKASAW, ALABAMA, THURSDAY, OCTOBER 5, 1967

FINAL 4 SECTIONS 32 PAGES 10¢ DAILY, 50¢ WEEKLY, PLUS TAX

OCT 5 1967 Meeting Told Rioters Should Be Treated As Criminals

Condoning Defiance Of Law Said Step To Anarchy

By BEN RAPPORT
Press Staff Reporter

POINT CLEAR — A member of the President's Crime Commission stressed in a talk here today that once a society comes defiance of law and due process the liberties of all are lost in the excesses of anarchy.

Richard Tollow, Powell Jr., who spoke at the meeting of the

directors and officers of The Southern Company and its affiliates, said Americans of good will, of both races, must act together to assure the following:

Tolerance of civil disobedience and justification of lawlessness must end.

Those who incite riots and rebellions should be treated as the most dangerous of criminals

and be relentlessly prosecuted. Powell, a Richmond attorney and a past president of the American Bar Association, said further:

"Those who participate in riots and rebellion should also be prosecuted with vigor, particularly the arsonists and snipers."

The speaker pointed out that criminal laws, at all levels of

government, should be reviewed and strengthened to deal specifically with the foregoing crimes in light of present conditions. Penalties should be adequate to deter criminal conduct, and justice should be swift and certain, he added.

Effective gun control laws should be adopted at state and federal levels, Powell said, and sniping at policemen and fire-

men should be made special offenses with severe penalties; and possession and use of Molotov cocktails should be serious crimes.

Powell said that those who incite and participate in nonviolent civil disobedience should also be subjected to criminal sanctions, where needed, laws should be clarified and

"TREAT AS ORIGINAL"

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE LOS ANGELES	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/22/71 - 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY [REDACTED] <i>b6 b7c</i>	TYPED BY pah
		CHARACTER OF CASE JUSTICE, SUPREME COURT OF THE UNITED STATES	

REFERENCE: Richmond teletype to the Bureau, 10/23/71.

- RUC -

ACCOMPLISHMENTS CLAIMED					<input checked="" type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN:	
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
							PENDING PROSECUTION OVER SIX MONTHS	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

APPROVED *Wef*

SPECIAL AGENT IN CHARGE

COPIES MADE:

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1 - Los Angeles (77-19654)

2 ccs destroyed

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77-121928-18

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3 DEC 6 1971

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one cc Deputy A.G.

Agency	
Request Recd.	OCT 27 1971
Date Fwd.	
How Fwd.	6 UDEC 10 1971
By	

Notations

[Handwritten signature]

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of: [REDACTED]
Date: 10/26/71

b6
b7c

Office: Los Angeles, California

Field Office File #: 77-19654

Bureau File #:

Title: LEWIS FRANKLIN POWELL, JR.

Character: JUSTICE, SUPREME COURT OF THE UNITED STATES

Synopsis:

Residence of applicant's daughter, Mrs. [REDACTED] verified. Applicant's presidency of the American College of Trial Lawyers verified. No credit, arrest or tax liens located for applicant. No arrest record located for applicant's daughter or son-in-law. Newspaper article regarding applicant set forth.

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- RUC -

DETAILS:

CREDIT AND ARREST

On October 26, 1971, the records of the Credit Bureau of Greater Los Angeles, Los Angeles, California, were reviewed by IC [REDACTED] and no record was located for applicant.

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On October 26, 1971, the records of the following agencies were reviewed for the applicant, applicant's daughter, [REDACTED], and applicant's son-in-law, [REDACTED]. No record was located:

Los Angeles Police Department, Los Angeles, California, By SC [REDACTED]

Los Angeles County Sheriff's Office, Los Angeles, California, By SC [REDACTED]

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Manhattan Beach Police Department, Manhattan Beach, California, By SA [REDACTED]

MISCELLANEOUS

Verification of Residence of Applicant's Daughter

On October 26, 1971, Mrs. [REDACTED] Manhattan Beach, California, advised SA [REDACTED] that [REDACTED] and [REDACTED] have resided at [REDACTED] Manhattan Beach, since July 1971, and are persons of good character, associates; reputation and loyalty.

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American College of Trial Lawyers (ACTL)

On October 26, 1971, Mr. [REDACTED] ACTL, Los Angeles, California, advised SA [REDACTED] that the applicant has been a member in good standing of this organization since August 1959. He stated applicant served as president during 1969 - 1970, and prior to that served on the Board of Regents. He stated this organization has no restrictions as to race, or religion, but is limited to one per cent of the practicing attorneys in any one state. Members must have been engaged in trial practice for 15 years and membership is by invitation. [REDACTED] stated he has been acquainted with applicant since 1960 and described him as a person of excellent character, associates, reputation, loyalty, and outstanding legal ability. [REDACTED] could provide no additional information regarding the applicant as he is acquainted with him only through membership in this organization.

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Tax Liens

On October 26, 1971, the records of the State of California, Franchise Tax Board, and the Tax Lien Desk, Internal Revenue Service, Los Angeles, were reviewed by SC [REDACTED] and no record was located of any tax liens for the applicant.

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Newspaper

On October 26, 1971, the library of the "Los Angeles Times", Los Angeles, California, was reviewed by SC [REDACTED] and the following article dated March 26, 1965, and captioned, "Lawyers Told of Challenges in Poverty War", was located:

"Lawyers must actively seek 'more effective means of distributing or extending legal services to those who need them,' Lewis F. Powell, Jr., president of the American Bar Association, said here Thursday. Any part of the challenge to meet the unfulfilled needs

LA 77-19654

may come in the operation of neighborhood service centers under the federal anti-poverty program, in which legal services for the poor are contemplated, he said.

Addressing the County Bar Assn. at the Biltmore, Powell said the poverty programs, plus programs for group protection legal services, present problems in connection with long established ethics of the legal profession. The fact 'that existing ethical standards have served the public well down through the years does not necessarily mean that they are immutable,' he said. 'We must be willing, with candor and objectivity, to consider the possibility that changed conditions require modification and different approaches.' To this end a committee has been formed to study and re-evaluate the Canons of Professional Ethics, he said. Lawyers' participation in anti-poverty programs are contemplated under the community action sections of the Economic Opportunity Act, he said, and already have been initiated in Detroit and Washington. More applications for such programs to include legal services to the poor are being received from throughout the nation, he said. 'No doubt some lawyers had reservations as to the proper role of the federal government in this area,' he said. 'But the War on Poverty is now established national policy, and surely our profession must extend its cooperation.'

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE BALTIMORE	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/22-26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA [REDACTED] <i>bc b7c</i>	TYPED BY gvc
		CHARACTER OF CASE DAPLI JUSTICE UNITED STATES SUPREME COURT	

REFERENCE:

Bureau teletype to Baltimore, 10/22/71.

-RUC-

ADMINISTRATIVE DATA:

Baltimore files do not contain any identifiable references to POWELL.

*Corrections corrected 10/27/71
1, 2, 3*

ACCOMPLISHMENTS CLAIMED						<input checked="" type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN: PENDING OVER ONE YEAR <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES			

APPROVED <i>[Signature]</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN SPACES BELOW	
COPIES MADE: 5 - Bureau 1 - Baltimore (77-FH)		97-121928-19 NOT RECORDED 18 OCT 27 1971	

*2 cc destroyed
Spec [Signature]*

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Agency		one cc Deputy A.G.	
Request Recd.			
Date Fwd.		OCT 27 1971	
How Fwd.			
By			

60 DEC 10 1971

**COVER PAGE
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**UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION**

Copy to:

b6/b7c

Report of:
Date:

SA [REDACTED]
OCTOBER 26, 1971

Office: BALTIMORE, MARYLAND

Field Office File #:

BA 77-FH

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE

Synopsis:

~~UNITED STATES SUPREME COURT~~
Supreme Court of the United States

DCII, Fort Holabird, Maryland, reflects POWELL has United States Army Investigative Records Repository (USAIRR), File X8706777; no derogatory information contained therein. In January, 1964, March, 1965 and November, 1965, POWELL received satisfactory National Agency Checks, which were conducted by the Army as well as Secret Clearances for invitations to the National Strategy Seminars held at the U.S. Army War College in Pennsylvania. Judge EMORY H. NILES, Chief Judge, Supreme Bench of Baltimore, retired, recommends applicant favorably and considers him best qualified of all possible applicants for consideration for Supreme Court of United States.

-RUC-

DETAILS:

AT FORT HOLABIRD, MARYLAND

The Defense Central Index of Investigations (DCII), Fort Holabird, Maryland, comprising indices to Army, Navy, and Air Force investigative files was checked on October 25, 1971 by SC [REDACTED] and reflected information identical with the captioned individual is located in the files of the U.S. Army Investigative Records Repository (USAIRR).

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BA 77-FH

A review of POWELL's USAIRR File on October 25, 1971, reflected that he received satisfactory National Agency Checks by the U.S. Army as well as Secret Clearances for invitations to the National Strategy Seminars held at the U.S. Army War College, Pennsylvania, during those years.

On October 26, 1971, Judge **EMORY H. NILES**, Chief Judge, Supreme Bench of Baltimore, retired because of age. [redacted] Baltimore, advised SA [redacted] that he considers applicant to be unqualifiably worthy for confirmation for the Supreme Court and considers him the best man mentioned for possible consideration yet. Judge **NILES** considers applicant as his first choice among all members of the American Bar Association and believes him to have the necessary qualifications of learning, ability and ~~temperament~~ of any Attorney known to him and believes that the applicant would have the entire support of the American Bar Association.

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temperament

Judge **NILES** advised that during the time that [redacted] was under consideration for Supreme Court position approximately two years ago, he, Judge **NILES**, submitted a letter to either the Attorney General's Office or the President, not now recalled, suggesting that consideration be given to POWELL for the then existing position.

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Judge **NILES** advised that he has known the applicant for approximately ten years, having preceded the applicant as the President of the Board of Governors of the American Bar Association. Through this relationship and membership in the American Bar Association, he has been in personal contact and on other judicial committees with the

BA 77-FH

bc
b7c

applicant on numerous occasions. Judge NILES advised that he served with the applicant as a member of the Institute of Judicial Administration in New York, better known as the Lumbarb Committee, named after its President, Judge J. EDWARD LUMBARD, Chief Judge, U.S. Court of Appeals, Second Circuit. Chief Judge WARREN BERGER was also a member of this committee. The Committee was formed by the American Law Institute and the American Bar Association to overhaul criminal law procedures, which group has written several books. Judge NILES advised that he also is a very close personal friend of applicant's sister and her husband, [REDACTED]

temperament

Judge [REDACTED] advised that applicant is moderate in his thinking and opposed to violence but is broad minded and knows the problems in civil rights matters and minority groups and would be an understanding person in his dealings in these matters. He is an advocate of the concept of the constitution of the United States. Judge NILES advised that during numerous meetings and discussions where the applicant was present and participated he found him to be a person in excellent control of his temperment, and while the applicant's judicial judgment has not been tested, he feels certain that he could carry the heavy responsibility necessary in this job. He considers applicant to be a class one citizen of unquestionable loyalty and a person, whose moral and personal character and associates are above reproach. He recommends the applicant without any reservation for consideration of a position on the U.S. Supreme Court.

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FEDERAL BUREAU OF INVESTIGATION
FOIPA
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1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

- Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

Section 552a

(b)(1)

(b)(7)(A)

(d)(5)

(b)(2)

(b)(7)(B)

(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

26 U.S.C. Section
6103

(b)(7)(D)

(k)(2)

(b)(7)(E)

(k)(3)

(b)(7)(F)

(k)(4)

(b)(4)

(b)(8)

(k)(5)

(b)(5)

(b)(9)

(k)(6)

(b)(6)

(k)(7)

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77-121928-20

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X Deleted Page(s) X
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UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:

SA [REDACTED] b6
b7C

Office: CHARLOTTE

Date:

OCTOBER 26, 1971

Field Office File #: 77-8092

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT, JUSTICE, SUPREME COURT OF THE
UNITED STATES

Synopsis:

b6
b7C [REDACTED] N.C. Bar Association, although not personally acquainted with POWELL, contends he is highly regarded, both as a person and as an attorney. A former president of the N.C. Bar Association also recommends appointee as astute and ethical, of good character, loyal, and of good judicial temperament. Three N.C. attorneys, present or former members of ABA's House of Delegates and one delegate at large highly recommend stating POWELL just, capable, clean-cut, scholarly, patriotic, thorough, with good associates; contend he is of high caliber, cool and level headed, conservative to moderate, of concern for the poor and indigent. [REDACTED] Duke law School highly recommends; [REDACTED] University of N.C. at Chapel Hill, N.C., recommends. [REDACTED] states POWELL appears very competent. Four well-known attorneys recommend and state appointee is moderate on civil rights. News morgue files, Charlotte, N.C., negative regarding any critical comments.

- RUC -

DETAILS:AT DURHAM, NORTH CAROLINA

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b7C On October 23, 1971, [REDACTED] an attorney, advised he first became acquainted with POWELL many years ago with the Junior Bar Section of the American Bar Association. Since that time they have served together on numerous committees and the House of Delegates of the American Bar Association and have

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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become close friends. [REDACTED] described POWELL as scholastic, just, and extremely capable. POWELL considers all facts before making decisions, is hard to anger, and exhibits excellent temperament. He is a healthy, clean-cut individual and an excellent family man.

POWELL's excellence has been recognized by his selection by the ROCKEFELLER family to represent Colonial Williamsburg, as well as his receipt of honorary degrees from Washington and Lee University and Hampden Sidney College.

After World War II, POWELL assisted in rewriting the Richmond, Virginia, City Charter and clearly exhibited his moderate position in Civil Rights matters as a member of the Richmond, Virginia, School Board.

[REDACTED] recommends POWELL without reservation.

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On October 23, 1971, [REDACTED] attorney and [REDACTED] North Carolina Bar Association, advised he is not personally acquainted with POWELL, but knows POWELL to be highly regarded as an individual and attorney of the legal profession as evidenced by his selection to the office held within the American Bar Association.

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On October 23, 1971, [REDACTED] Professor [REDACTED] of Duke University Law School, advised he has had a number of meetings with POWELL and holds him in the highest esteem. He feels POWELL is a fine man of excellent character, loyalty and associations and excellent scholarly legal ability.

[REDACTED] said he had no specific personal information on which to evaluate POWELL's views on Civil Rights, but stated POWELL was regarded as a moderate in this area. [REDACTED] recommends POWELL without reservation.

AT RALEIGH, NORTH CAROLINA

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On October 26, 1971, [REDACTED] Attorney, Maupin, Taylor, and Ellis, 33 West Davie, and currently [REDACTED] [REDACTED] advised he has known

POWELL well since serving with POWELL when both were members of House of Delegates of American Bar Association. He also knew POWELL as a member of the Society of Cincinnati, a patriotic organization.

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[redacted] described POWELL as a thorough, loyal American whose character and associates are irreproachable. He is an extremely competent attorney with excellent judicial temperament. He has a reputation of being in the middle of the road as far as political matters, including Civil Rights, are concerned. [redacted] recommends POWELL highly.

AT ASHEVILLE, NORTH CAROLINA

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On October 26, 1971, Honorable [redacted] Judge, Fourth Circuit Court of Appeals, stated he knows POWELL slightly but has had no personal contact with him other than appointee's appearing from time to time before Fourth Circuit Court of Appeals. Judge [redacted] described appointee as appearing to be very competent; however, he has no knowledge as to his thinking on Civil Rights issues. He stated from what he has heard, appointee has a good reputation and is a past President of the American Bar Association.

AT GREENSBORO, NORTH CAROLINA

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b7C
On October 26, 1971, [redacted] Attorney, Jefferson Standard Building, advised that he has known LEWIS FRANKLIN POWELL, JR., since 1962 and sees him approximately four to five times yearly, primarily in regard to affairs of mutual interest in the American Bar Association. He considers POWELL to be of outstanding judicial ability and temperament and a moderate in the Civil Rights field. He states all of his recommendations concerning POWELL would have to be in the outstanding category, and he can name no other person more qualified for a Supreme Court appointment.

CE 77-8092
RRG:dh

AT RALEIGH, NORTH CAROLINA

On October 26, 1971, [REDACTED] Attorney, Poyner, Geraghty, Hartsfield, and Townsend, 615 Oberlin Road, Raleigh, North Carolina, advised as follows:

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[REDACTED] the North Carolina State Bar [REDACTED] and has known the appointee casually and by reputation for approximately ten years. The appointee is held in high regard by his fellow attorneys because of his astute practice of the law and is considered to be very ethically correct. He is one of the most respected attorneys in law practice.

POWELL is known as an attorney with excellent judicial temperament.

[REDACTED] knows nothing unfavorable concerning the appointee and believes him to be an individual whose character is beyond reproach, a loyal American, and an individual who would make an excellent Supreme Court Judge. He highly recommended POWELL for the position.

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CE 77-8092
RRG:dh

AT RALEIGH, NORTH CAROLINA

On October 26, 1971, [REDACTED] Attorney, Durham Life Building, Raleigh, North Carolina, advised as follows:

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[REDACTED] stated that he [REDACTED] is a state delegate at large from North Carolina to the American Bar Association and that he has known appointee very casually since 1965. The appointee is a man of absolute integrity whose reputation is unsurpassed amongst attorneys in the United States.

The appointee is known in general circles as a responsible conservative who during the period of 1964-1965 led the American Bar Association in providing legal services for the poor.

[REDACTED] has never heard anything unfavorable concerning POWELL and believes POWELL to have an excellent judicial temperament, to be of excellent character, to be a loyal American, and recommends him highly to the Supreme Court of the United States.

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CE 77-8092

CSM:egp

AT CHAPEL HILL, NORTH CAROLINA

On October 26, 1971, [REDACTED] University of North Carolina Law School, advised his personal acquaintance with POWELL was very slight. However, he knew POWELL to have a impeccable general reputation within the bar as a first hand lawyer. He had no information as to POWELL's judicial temperament, attitude in civil rights matters or any derogatory information.

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CE 77-8092

MJS:egp

AT GREENSBORO, NORTH CAROLINA

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On October 26, 1971, [REDACTED] Attorney, Greensboro, North Carolina, advised that he had known Mr. POWELL for the past 10 or 15 years and saw him about two or three times annually, primarily in regard to matters of mutual interest at meetings of the American Law Institute and at the American Bar Association. He stated he considered Mr. POWELL "excellently qualified" for the Supreme Court position, but noted he had never discussed the matter of civil rights with him and did not know his specific position on the matter of civil rights. He characterized Mr. POWELL as "a gentleman and a scholar" and indicated he had never heard any derogatory information about him.

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On October 26, 1971, [REDACTED] Attorney, Burlington, North Carolina, advised he has known Mr. POWELL since approximately June, 1965, and saw him two or three times annually at meetings of the American Bar Association. He stated that he believed that Mr. POWELL was a very fair minded person who was very well qualified for the position of Supreme Court Justice. He stated he knew that Mr. POWELL had led the American Bar Association in legislation in extending aid to indigents who had been indicted for various offenses in the courts. He stated that he had never heard any derogatory information about Mr. POWELL and recommended him for any position of trust in the Government.

CE 77-8092

HWT:mjw

AT CHARLOTTE, NORTH CAROLINA

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On October 26, 1971, [REDACTED] Helms, Mulliss and Johnston, Attorneys, North Carolina National Bank Building, advised he has known POWELL personally, professionally and somewhat socially for approximately 35 years. He said that often his firm and POWELL's firm have been correspondents in legal matters of interest.

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[REDACTED] said POWELL is a gentleman in every sense of the word and is exceptionally well qualified to be a Supreme Court Justice. POWELL is extremely capable, sound, gifted with great common sense; has an open mind; is well informed, astute and wise. He stated POWELL is sober, distinguished, of good character and entirely loyal. He is in good health, active mentally and believes that all minority persons and groups are entitled to their voice in affairs.

[REDACTED] said that the appointee "is neither a John Bircher nor a radical," that he is good, considerate and well-balanced.

[REDACTED] said that POWELL would never evade an issue but face it squarely; that he is a positive thinking person about whom he knows nothing unfavorable. He said POWELL is "one hundred per cent" and would be a distinct credit to the United States Supreme Court.

CE 77-8092

LHE:mjw

AT CHARLOTTE, NORTH CAROLINA

[REDACTED] Attorney, Law Building, is a Democrat and has been a member of the House of Delegates, American Bar Association, from 1962 to present.

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[REDACTED] stated appointee is a fine lawyer with legal ability of the highest caliber. He is level-headed, has extremely fine judicial temperament, is cool-headed and moderate. [REDACTED] has found him to be extremely fair in all situations and has been closely associated with him for the past fifteen years through activities of the American Bar Association.

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b7c

[REDACTED] states appointee was a leader in the idea to appoint defense attorneys for indigent defendants and that he feels that he is a moderate in connection with Civil Rights. He states there is no question as to his loyalty, character and associates and would unhesitatingly recommend POWELL to the highest degree.

The morgue files of the Charlotte Observer and the Charlotte News, daily publications of the Knight Newspapers, Charlotte, North Carolina, contain the following references to LEWIS FRANKLIN POWELL, JR., none of which contain critical comment.

(1). An Associated Press article dated January 11, 1966, at Richmond, Virginia, identifying POWELL as a past president of the American Bar Association and a member of President LYNDON B. JOHNSON's Committee on Law Enforcement and Administration of Justice, in which POWELL was quoted as urging all citizens of America to help in stressing respect for the law.

(2) A Washington Post - Los Angeles Times article dated October 22, 1971, by JOHN P. MACKENZIE stating that POWELL believed that few could doubt the impact of the Miranda decision of the Supreme Court upon the law enforcement process.

(3) An article by ROBERT S. BOYD of the Observer's Washington Bureau, dated October 22, 1971, concerning the surprise nominations of President NIXON to fill the two present vacancies on the United States Supreme Court. The article comments about those individuals referred to the committee of the American Bar Association previously of recent date who were supposedly "not qualified" and of the President's seeming own selections at present, including POWELL.

(4) An editorial of the Charlotte Observer dated October 23, 1971, stating that POWELL was well qualified; that he seemed to have conservative, not extremist, views of criminal justice. And, that he was moderate, not extremist, in the field of equal rights, even when a member of the Richmond (Virginia) school board and desegregation of public schools was in its beginning. The editorial said that in a first judgment, POWELL deserved confirmation.

The files mentioned above were reviewed on October 26, 1971.

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE ST. LOUIS	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY IC [REDACTED]	TYPED BY mjl
		CHARACTER OF CASE DAPLI JUSTICE U. S. SUPREME COURT	

REFERENCE: Butel, 10/22/71.
Richmond tel, 10/23/71.
WFO tel, 10/23/71.

- RUC -

*corrected
10/27/71
mef
Corrections
P-1*

J

ACCOMPLISHMENTS CLAIMED					<input type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		
							PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO

APPROVED *[Signature]* SPECIAL AGENT IN CHARGE

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 1 - St. Louis (77-NPRC-M)
SL FILE WILL BE DESTROYED IN 120 DAYS.

77-121928-22
NOT RECORDED
 3 DEC 8 1971

Dissemination Record of Attached Report			
Agency		one cc Deputy A.G.	
Request Recd.			
Date Fwd.		OCT 27 1971	
How Fwd.			
By			

Notations

60 DEC 1 1971

A* COVER PAGE

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:

IC [REDACTED] b6

b7c

Office:

ST. LOUIS

Date:

OCTOBER 26, 1971

Field Office File #:

77-NPRC-M

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

DEPARTMENTAL APPLICANT
JUSTICE~~UNITED STATES SUPREME COURT~~

Character:

Supreme Court of the United States

Synopsis:

LEWIS FRANKLIN POWELL, JR., served in U. S. Army Air Corps, received honorable release from active duty and USAF Reserve with 20 years honorable service. POWELL employed by President's Commission on Law Enforcement and Administration of Justice, Washington, D. C., intermittently. Terminated by reason of completion of assignment. Employed by Department of Defense, Arlington, Va., intermittently. Terminated by reason of expiration of appointment.

- RUC -

DETAILS: AT ST. LOUIS, MISSOURI

A review on October 26, 1971, of the Air Force records on file at the National Personnel Records Center (Military Branch), St. Louis, Missouri, indicated LEWIS FRANKLIN POWELL, JR., Serial Number AO 903 679, accepted appointment as First Lieutenant in the U. S. Army Air Corps and entered on active duty on May 2, 1942, at Miami Beach, Florida. He was honorably released from active duty on February 12, 1946, as a Colonel, Intelligence Staff Officer at Washington, D. C., by reason of demobilization. He was on terminal leave from November 5, 1945, to February 12, 1946. He served in the U. S. Air Force Reserve, inactive status, from February 13, 1946, to May 31, 1963, when transferred to the Retired Reserve as a Colonel upon completion of a total of twenty years honorable service. He had active duty training from June 6, 1948, to June 20, 1948, and from October 9, 1949, to October 13, 1949.

He had foreign service in the European Theater and awarded the Legion of Merit Bronze Star Medal, European-

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SL 77-NPRC-M

African-Middle Eastern Service Medal with five Bronze Service Stars, American Theater Service Medal, World War Two Victory Medal and France's Croix de Guerre with Palm.

His character and efficiency ratings were shown as Superior and there was no record of courts-martial or absence without official leave.

His date and place of birth were shown as September 19, 1907, Suffolk, Virginia.

On October 26, 1971, a review by SC [REDACTED] of the personnel records, National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, disclosed that LEWIS F. POWELL, JR., Social Security Number 223-05-6493, was employed on September 28, 1965, as a member, intermittent, of the President's Commission on Law Enforcement and Administration of Justice at Washington, D. C. This employment was terminated on June 21, 1967, by reason of completion of assignment. b6 b7c

He was employed on July 18, 1969, as a Consultant, intermittent, with Department of Defense, Office of the Secretary of Defense, Blue Ribbon Panel, at Arlington, Virginia. This employment was terminated on June 30, 1970, by reason of expiration of appointment.


The date and place of birth were shown as September 19, 1907, at Suffolk, Virginia.

There was no record located of employment by the President's Commission on Law Enforcement and Administration of Justice from 1968 to 1970.

"TREAT AS ORIGINAL"

FD-263 (Rev 12-19-67)

FEDERAL BUREAU OF INVESTIGATION


REPORTING OFFICE TAMPA	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA  bs b7c	TYPED BY GB
		CHARACTER OF CASE NOMINEE, JUSTICE SUPREME COURT OF UNITED STATES	

REFERENCES:

Richmond teletype to Bureau dated 10/25/71.
Tampa teletype to Bureau dated 10/26/71.

- RUC -

ACCOMPLISHMENTS CLAIMED						<input checked="" type="checkbox"/> NONE	ACQUIT- TALS	CASE HAS BEEN:
CONVIC	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES			

APPROVED 

SPECIAL AGENT IN CHARGE

COPIES MADE:

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2 cc - destroyed

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77-1925-23


NOT RECORDED

8 DEC 8 1971

Dissemination Record of Attached Report

Agency			
Request Recd.		OCT 27 1971	
Date Fwd.		NOV 10 1971	
How Fwd.			
By			

Notations



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:

SA [REDACTED] b6

Office: Tampa, Florida

Date:

October 26, 1971 b7C

Field Office File #:

TP 77-1925

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

NOMINEE, JUSTICE, ^{HE}
SUPREME COURT OF UNITED STATES

Synopsis:

Attorney [REDACTED] Tampa, Florida, close personal
associate of nominee, contacted and highly recommends. b6
b7C

- RUC -

DETAILS:

On October 26, 1971, [REDACTED] Attorney,
Tampa, Florida, close personal associate of nominee,
was contacted and furnished the following information.

Mr. [REDACTED] advised that he first met nominee
in the American Bar Association approximately twenty
years ago, and since that time has maintained close
contact with him on both a personal and professional
basis. b6
b7C

Mr. [REDACTED] advised nominee has twice served
as President of the American Bar Association, and also
served as Chairman of the American College of Trial
Lawyers 1969 through 1970. He further advised that
nominee's current law firm in Richmond, Virginia, is
one of the most outstanding law firms in the country. b6
b7C

During [REDACTED] association with nominee, he
has found his character, loyalty, and associates to be
of the highest caliber, and he feels the reputation of
nominee is beyond reproach. Mr. [REDACTED] highly recommends
nominee without any reservation.

- 1* -

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE SAN FRANCISCO	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, Jr.		REPORT MADE BY [REDACTED] <i>b6 b7c</i>	TYPED BY 11a
		CHARACTER OF CASE DAPLI JUSTICE SUPREME COURT OF THE UNITED STATES	

b6/b7c
REFERENCE: Report of SA **[REDACTED]** at San Francisco, 10/23/71.
 Bureau teletypes 10/24/71, and 10/25/71.

-RUC-

ACCOMPLISHMENTS CLAIMED						ACQUIT-TALS	CASE HAS BEEN:	
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR	<input type="checkbox"/> YES <input type="checkbox"/> NO
							PENDING PROSECUTION OVER SIX MONTHS	<input type="checkbox"/> YES <input type="checkbox"/> NO
APPROVED	<i>RGL</i>					SPECIAL AGENT IN CHARGE		
COPIES MADE:						DO NOT WRITE IN SPACES BELOW		
5 - Bureau (AMSD) 1 - San Francisco (77-13737)						177-121928-24 NOT RECORDED 8 DEC 8 1971		
Dissemination Record						Notations		
Agency	OAC cc Deputy A/G					<i>[Signature]</i>		
Request Recd.	OCT 27 1971							
Date Fwd.								
How Fwd.								
By	TULEG 10/19/71							

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of: [REDACTED] *bg*Date: 10/26/71 *b7c*

Office: San Francisco, California

Field Office File #: 77-13737

Bureau File #:

Title: LEWIS FRANKLIN POWELL, Jr.

Character: DEPARTMENTAL APPLICANT
JUSTICE
SUPREME COURT OF THE UNITED STATES

Synopsis: *bg/b7c*

[REDACTED] Professor of Law, SU, interviewed and recommends Appointee favorably. Recommendation based solely on academic research, no personal association with Appointee.

-RUC-

DETAILS: AT STANFORD, CALIFORNIA *bg/b7c*

On October 26, 1971, [REDACTED] Professor of Law, Stanford University, advised that he had no personal association with Appointee. He stated that his evaluation of Appointee was based entirely upon academic research and study. He characterized Appointee as being exceptionally bright, one who is of exceptional character and reputation. He stated he certainly knew of no reason to question his loyalty or associations. He considered Appointee to be moderate in the area of civil rights and added that he felt Appointee possessed the judicial temperament necessary for the position for which he is being considered. He concluded by recommending the Appointee favorably.

- 1* -

"TREAT AS ORIGINAL"

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE NEW ORLEANS	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/23 - 25/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA [REDACTED] b6 b7c	TYPED BY mhl
CHARACTER OF CASE DEPARTMENTAL APPLICANT, U. S. DEPARTMENT OF JUSTICE, SUPREME COURT OF THE UNITED STATES			

REFERENCE:

Bureau teletype to Richmond, 10/22/71.

-RUC-

ACCOMPLISHMENTS CLAIMED						ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		
							PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO
APPROVED: <i>[Signature]</i> COPIES MADE: 5-Bureau 1-New Orleans (77-4974)						SPECIAL AGENT IN CHARGE	
<i>9 cc's destroyed</i> 77-121928-25 NOT RECORDED 3 DEC 8 1971						DO NOT WRITE IN SPACES BELOW	
						<i>[Signature]</i>	
Dissemination Record Report						Notations	
Agency						<i>[Signature]</i>	
Request Recd.		OCT 27 1971					
Date Fwd.	6 DEC 01 1971						
How Fwd.							
By							

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:

SA [REDACTED] ^{b6}
[REDACTED] ^{b7C}

Office:

NEW ORLEANS

Date:

10/26/71

Field Office File #:

NO 77-4974

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT, U. S. DEPARTMENT OF
JUSTICE, SUPREME COURT OF THE UNITED STATES

Synopsis:

[REDACTED] Shreveport, La., has known appointee casually for few years and recommended him highly. [REDACTED] attorney, Lake Charles, La., and [REDACTED] attorney, Baton Rouge, La., both long-time acquaintances of appointee, recommend him highly for position known to be in question.

-RUC-

DETAILS:

Mr. [REDACTED] Beck Building, Shreveport, Louisiana, who is a former National Republican Committeeman and who resides at [REDACTED] Shreveport, furnished the following information on October 25, 1971:

Mr. [REDACTED] has been familiar with Mr. LEWIS FRANKLIN POWELL, JR., since about 1965, when POWELL was president of the American Bar Association, although he is not personally well acquainted with Mr. POWELL. As an attorney, Mr. [REDACTED] has read articles written by Mr. POWELL and as a person active in political life, he has followed Mr. POWELL's career closely with friends throughout the country.

Mr. [REDACTED] will give Mr. POWELL the highest recommendation for the position of Justice of the Supreme Court of the United States. Mr. POWELL has the reputation of being a person of the highest moral character. He has no weaknesses. Mr. POWELL is highly intelligent, compassionate, believes in moderation on social issues, is forceful, but not overbearing, does not lose his temper, and is moderate and objective on civil rights issues. Mr.

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NO 77-4974
ERP:aml

[REDACTED] could not give a higher recommendation to any person for this position.

[REDACTED] Attorney, [REDACTED] Baton Rouge, Louisiana, advised as follows on October 25, 1971:

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He has known LEWIS FRANKLIN POWELL, Jr., for almost 20 years. [REDACTED] served with POWELL in the House of Delegates for the American Bar Association in 1952 and during the years approximately 1964 and 1965 served with POWELL on the Board of Governors of the ABA Judiciary Committee. [REDACTED] has personally been on this committee for nine years.

[REDACTED] highly recommended Judge WARREN E. BURGER for the Supreme Court of the United States approximately three years ago and at the same time highly recommended POWELL for a seat on the Supreme Court. [REDACTED] then and now cited POWELL as an excellent person of brilliant intellect, an outstanding constitutional lawyer, a person of impeccable honesty and integrity and a person whose views on the role of the Supreme Court coincide with President NIXON's.

[REDACTED] has had occasion to meet with POWELL at least twice a year since 1952 and during some years has met with him as many as five or six times. He considers POWELL a moderate on the civil rights issue and felt that POWELL could not be anything but completely fair in any matters relative to civil rights and liberties.

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[REDACTED] described POWELL as calm, but persuasive; speaks his mind, but is not controversial; a person of sternness, but one never known to have lost his temper. POWELL is a devoted family man. [REDACTED] stated he could never truthfully state that he has seen POWELL drink alcohol beverages, but felt that if he did drink, that it would be less than moderate. POWELL is active in civic and religious projects. [REDACTED] stated that he actually does not know of any weakness on the part of POWELL. He reiterated that his character and loyalty are unquestionable and he considers POWELL a gentleman and a scholar in every respect. POWELL is unquestionably a loyal citizen.

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NO 77-2974
GMC:crl

AT LAKE CHARLES, LOUISIANA.

The following investigation was conducted by SA
[REDACTED]

On October 23, 1971, [REDACTED] Stockwell, St. Dizier, Sievert and Viccellio, Attorneys, Room 505, Pioneer Building, advised of the following:

He became acquainted with LEWIS POWELL in Los Angeles, California, in 1935, when he was in the Junior Bar Section of the American Bar Association and the acquaintanceship has continued over the years. When he was [REDACTED] the Louisiana Bar Association, some seven to eight years ago, POWELL was president of the American Bar Association, and he came to Lake Charles to visit him. The last time he saw POWELL was in London in June, 1971, at the American Bar meeting.

In his opinion, LEWIS POWELL has the excellent reputation, perfect character and all the qualifications for a Supreme Court Justice. He is definitely a real American in every sense of the word. He is undoubtedly one of the very top notch lawyers in the United States and as a Justice, he most definitely will interpret the law and not try to make the law.

He feels LEWIS POWELL is a broad-minded, solid person who has no prejudices, racial or otherwise, and to his knowledge, he has never belonged to any racially prejudiced organizations.

Mr. [REDACTED] advised the country will surely be proud of Mr. POWELL as a Justice, and he is sure the Supreme Court will improve with the addition of Mr. POWELL.

Mr. [REDACTED] added that he has written to the President of the United States only once in his life and that was a few years ago when he wrote to recommend that LEWIS POWELL be made a Supreme Court Justice.

"TREAT AS ORIGINAL"

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE NEWARK	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/22-26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY [REDACTED]	TYPED BY JMS
		CHARACTER OF CASE DAVLI JUSTICE, SUPREME COURT OF THE US	

REFERENCES: Bureau teletypes to Newark dated 10/22/71, 10/23/71 and 10/25/71.

-RUC-

ACCOMPLISHMENTS CLAIMED						ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO
							PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO
APPROVED <i>RWS/zy</i>	SPECIAL AGENT IN CHARGE					DO NOT WRITE IN SPACES BELOW	
COPIES MADE:	5-Bureau (SD) 1-Newark (77-12034)					77-121928-26	
	<i>2ccs destroyed</i>					NOT RECORDED 3 DEC 8 1971	
Dissemination Record of <i>Robert Allen A.G.</i>						Notations	
Agency							
Request Recd.			OCT 27 1971				
Date Fwd.			6 DEC - 0 1971				
How Fwd.							
By							

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of: [REDACTED]
Date: October 26, 1971

b6
b7C

Office: Newark, New Jersey

Field Office File #: 77-12034

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE, SUPREME COURT OF THE UNITED STATES

Synopsis:

[REDACTED] Attorney, Newark, NJ, advised he has known applicant 25 years, considers him to be outstanding in every way. He stated applicant former president of the American Bar Association and person of excellent character, reputation and loyal American. Mr. [REDACTED] would recommend applicant most highly. Professor [REDACTED] Princeton University, does not know applicant personally.

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b7C

-RUC-

DETAILS:ATTORNEY

On October 26, 1971, Mr. [REDACTED] Newark, New Jersey, advised that he has known the applicant for approximately 25 years. He advised that the applicant is an outstanding attorney and an outstanding individual in every way. He advised the applicant is a former president of the American Bar Association and in that position did an outstanding job. He advised that the applicant has handled many cases for his, [REDACTED] law firm. He advised the applicant is a member of the best law firm in the State of Virginia. He advised that his contacts with the applicant have been social as well as professional and he considers him to be a person of excellent character, reputation and a loyal American. He stated that he had sent a letter to the Attorney General of the United States several years ago recommending that the applicant be considered for any vacancy which might exist on the United States Supreme Court.

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b7C

NK 77-12034

He stated he was delighted to hear the applicant nominated by the President several years after he had recommended the applicant. He advised that the applicant has the judicial temperament to make an excellent judge. He stated he is well qualified as an attorney, is fair minded and would make decisions based on individual merit of the cases and would never discriminate against any group. He stated that he would recommend the applicant for a position with the Supreme Court.

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Professor [REDACTED] Faculty Road, Princeton University, Princeton, New Jersey, was interviewed late in the evening of 10/27/71 by SA [REDACTED]. Professor [REDACTED] advised that he has done some research on the nominee. By definition he stated that he had read material written by Powell; specifically, articles and legal journals by Powell and articles in legal journals concerning Powell. With regard to Powell he has an open mind. He does not know the nominee personally.

"TREAT AS ORIGINAL"

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE JACKSONVILLE	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA [REDACTED]	TYPED BY bg b7c :sjt
		CHARACTER OF CASE DAPLI JUSTICE SUPREME COURT OF THE UNITED STATES	

REFERENCES:

Bureau teletypes dated October 22, 24, and 25, 1971.

- RUC -

ENCLOSURES: TO BUREAU

Five xerox pages of speech given by LEWIS FRANKLIN POWELL, JR., which later appeared in the "University of Florida Law Review", Volume XVIII, Summer 1965, Number One.

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[REDACTED]
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ACCOMPLISHMENTS CLAIMED					<input checked="" type="checkbox"/> NONE	ACQUIT TALS	CASE HAS BEEN:
CONVIC	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		
							PENDING OVER ONE YEAR <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

APPROVED <i>[Signature]</i> SPECIAL AGENT IN CHARGE	DO NOT WRITE IN SPACES BELOW <div style="font-size: 2em; font-family: monospace;">77-121928-27</div> NOT RECORDED 3 DEC 8 1971
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ENCLOSURE

Dissemination Record of Attached Report				Notations
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Request Recd.				
Date fwd.	OCT 27 1971			
How Fwd.	ODEC 10/19/71			
By				

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of:

SA [REDACTED] b6 b7C

Office:

JACKSONVILLE

Date:

October 26, 1971

Field Office File #:

77-2696

Bureau File #:

Title:

LEWIS FRANKLIN POWELL, JR.

Character:

DEPARTMENTAL APPLICANT
JUSTICE
SUPREME COURT OF THE UNITED STATES

Synopsis:

LEWIS FRANKLIN POWELL received Honorary Doctor of Laws degree from University of Florida on April 25, 1965. He received this degree during the commencement exercises at the university and was the commencement speaker for these exercises.

- RUC -

DETAILS:

The following investigation was conducted by SA [REDACTED] at Gainesville, Florida:

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On October 26, 1971, [REDACTED] Professor, University of Florida College of Law, Gainesville, Florida, and [REDACTED], advised he has been professionally acquainted with LEWIS FRANKLIN POWELL, JR. since about 1963. He stated this acquaintance has been most through meetings of the American Bar Association, at which time he also became socially acquainted with Mr. POWELL.

Mr. [REDACTED] advised that on April 25, 1965, Mr. LEWIS FRANKLIN POWELL received a Honorary Doctor of Laws degree from the University of Florida. Mr. POWELL was the commencement speaker at the University of Florida on April 25, 1965. At the recommendation of the [REDACTED] Mr. POWELL's speech was on "The Need for Respect for Law and Order and the Current Deterioration in Respect for Law and Order in the United States."

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JK 77-2696

Mr. [REDACTED] advised that LANCE J. LAZONBY, at that time an attorney practicing in Gainesville, Florida, now deceased, recommended that Mr. POWELL receive the honorary degree from the University of Florida. Mr. LAZONBY at the time was a member of the House of Delegates of the American Bar Association, during which time Mr. POWELL was President of the American Bar Association.

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Mr. [REDACTED] advised Mr. POWELL has a distinguished legal background and career and he would definitely recommend him for a position with the United States Government. Mr. [REDACTED] stated he has also found Mr. POWELL to be a gentleman at social affairs of the American Bar Association and stated he entertained Mr. POWELL in his home when he was at the university for the commencement ceremonies. Mr. [REDACTED] advised he has no reason whatsoever to question Mr. POWELL's character, associates, reputation, or loyalty to the United States.

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Mr. [REDACTED] further advised that he has never discussed with or heard POWELL discuss his attitude toward civil rights and the rights of minorities; however, from his knowledge of POWELL, he is of the opinion that POWELL will follow the law regardless of any personal feelings. He considers him a man of the highest integrity and was of the opinion he has a judicial temperament.

Mr. [REDACTED] made available the entire text of Mr. POWELL's speech which was given at the commencement ceremonies and later appeared in the "University of Florida Law Review," Volume XVIII, Summer of 1965, Number One, pages one through eight.

A Xerox copy of this speech is being enclosed with this report.

Mr. [REDACTED] advised he has no knowledge of any other appearances or speeches given by Mr. POWELL at the University of Florida.

University of Florida Law Review

VOL. XVIII

SUMMER 1965

No. 1

RESPECT FOR LAW AND DUE PROCESS — THE FOUNDATION OF A FREE SOCIETY*

LEWIS F. POWELL, JR.**

On the first day of May America celebrates Law Day USA. This is the day designated by the Congress to commemorate our belief in law and our conviction that only by strict adherence to the rule of law can we preserve the freedoms, and indeed the prosperity, which have made our country unique in the history of mankind. As our future well-being depends upon the preservation of our legal system, it seems appropriate to discuss the state of law and order.

We live in a time of unprecedented unrest and discord throughout the world. The International Communist Movement, to a far greater extent than most Americans realize, is responsible for much of this. The schism between Red China and the Soviet Union has perhaps worsened, rather than improved, the slender prospect for genuine peace.

But there are also other underlying causes for international unrest. While these are systematically exploited by the Communists, they are quite fundamental in themselves. They relate to the revolt against colonialism, to economic weaknesses of undeveloped nations, to acute poverty and lack of education, and to irresponsible leadership.

But whatever the causes, the spirit of anarchy sweeping the world has no respect for law and order. The deliberate purpose of many revolutionary leaders is to destroy the rule of law and wipe out most of the established values of a civilized society.

Although America is still a place of relative order and tranquility, there are deeply disquieting signs even in our country of a rising tide of lawlessness — ranging from serious crime to various forms of disrespect for law and order.

President Johnson has recently called for major improvement in law enforcement and in the administration of justice. In his message on this subject, he said: "Crime has become a malignant enemy in America's midst." The President did not overstate the situation.

*The substance of this article was delivered as the commencement address at the University of Florida on April 26, 1965. For purposes of publication in the Florida Law Review, some revisions and additions have been made.

**B.S. 1929, LL.B. 1931, Washington and Lee University; LL.M. 1932, Harvard Law School; Trustee, Washington and Lee University and Hollins College; Member, Virginia Board of Education; Member of Virginia Bar; President, The

ENCLOSURE

77-121928-27

This is not, contrary to a popular misconception, a question of civil rights. The issue is the fundamental one of law and order and due process. Mr. Justice Black has spoken eloquently on this subject:¹⁴

The streets are not now and never have been the proper place to administer justice. Use of the streets for such purposes has always proved disastrous to individual liberty in the long run, whatever fleeting benefits may have appeared to have been achieved. And minority groups, I venture to suggest, are the ones who always have suffered and always will suffer most when street multitudes are allowed to substitute their pressures for the less glamorous but more dependable and temperate process of the law. Experience demonstrates that it is not a far step from what to many seems the earnest, honest, patriotic, kind-spirited multitude of today, to the fanatical, threatening, lawless mob of tomorrow. And the crowds that press in the streets for noble goals today can be supplanted tomorrow by street mobs procuring the court for precisely opposite ends. . . .

Those who encourage minority groups to believe that the United States Constitution and federal laws give them a right to patrol and picket the streets whenever they choose in order to advance what they think to be a just and noble end, do no service to those minority groups, their cause or their country.

In our complex society power is diffused among many groups and seldom remains static. Public opinion is capable of abrupt swings. Individuals and particular groups, accordingly, can never be certain that they will always be strong enough to force others to respect their rights. They can be assured that they will remain free to speak their views and be protected in their persons and property only so long as laws are observed widely and enforced fairly.

Disrespect for law and an impatience with orderly processes have begun to appear on some college campuses. With student riots making headlines around the world, it is to their credit that American students generally have behaved so maturely. But the major campus eruption at the University of California last winter was ominous. Reasonable discussion of alleged grievances was abandoned in favor of massive sit-ins and mob action.¹⁵ Even certain elements of the faculty condoned rather than condemned this resort to physical coercion.

14. *Cox v. Louisiana*, 379 U.S. 559, 583-84 (1965) (dissenting opinion).

15. Professors Lipset and Seabury were quoted in *Look Magazine* as commenting perceptively on this situation as follows: "The startling incomprehension or indifference shown by some of the best students in the country to the values of due process . . . challenges the very foundations of our democratic order. . . . A

happily in California, and elsewhere, only a small minority has shown this reckless disregard for orderly processes and the rights of others. But history has demonstrated the disruptive power for evil of small, lawless groups, especially where their movements are infiltrated by trained subversives or determined extremists."¹⁶

The attack on the Administration's policy in Viet Nam illustrates the thin line that sometimes exists between legitimate protest and irresponsible conduct. There are sound reasons for the widest debate of the dangerous situation in southeast Asia — both on and off the college campus. There has indeed been constructive and responsible discussion in teach-ins and seminars by students and faculties. Yet, as James Reston noted, there have been other examples where the mood was one of "violence," with sit-ins and inflammatory demonstrations taking the place of reasoned discussion. Mr. Reston pointed out that some of the student and teacher demonstrations have been "backed by [anti-American] propaganda of the most vicious nature."¹⁷

Traditionally our universities have been the citadels of free inquiry, devoted to the proposition that rational discussion was the surest way to truth and to a resolution of honest differences. Those who break the great tradition of respect and tolerance for the differing views of others by resorting to coercion, whether "violent" or "nonviolent," menace the spirit of responsible inquiry essential to an institution of learning.

And here, as a lawyer, may I emphasize that the right of dissent is surely a vital part of our American heritage. So also are the rights to assembly, to petition and to test the validity of challenged laws or regulations. But our constitution and tradition contemplate the orderly assertion of these rights. There is no place in our system for vigilantism or the lawless instrument of the mob.¹⁸

whole generation may learn that ends justify any means." *Look*, Feb. 23, 1965, p. 30, 42. For interesting comments on the Berkeley riots, see the statement of Dr. Max Rafferty, California State Superintendent of Public Instruction, reported in *U.S. News & World Report*, May 17, 1965, p. 70.

16. J. Edgar Hoover, testifying before a Congressional Committee, cited the Berkeley campus out-break as a "demonstration which, while not Communist, originated or controlled, has been exploited by a few Communists. . . ." Mr. Hoover further testified that "Communist party leaders . . . [expect to] exploit similar student demonstrations to their own benefit in the future." *N.Y. Times*, May 18, 1965, p. 29, col. 2. Dr. James M. Nabrit, Jr., the President of Howard University in Washington, D.C., recently warned students that Communists had infiltrated a student protest group. See *N.Y. Times*, April 28, 1965, p. 1, col. 3.

17. *N.Y. Times*, April 21, 1965, p. 44, col. 6.

18. See *Hell v. Maryland*, 378 U.S. 226, 236 (1964) (Black, J., dissenting): "A great purpose of freedom of speech and press is to provide a forum for settlement of acrimonious disputes peaceably without resort to intimidation, force or violence. The experience of ages points to the inexorable fact that people are frequently

Lawyers themselves must bear a measure of responsibility for the deteriorating situation. All too often the Canons of Professional Ethics are ignored and the organized bar takes no action. We have also failed to come to the defense of the Supreme Court and our judicial system when these have been under unfair attack. We have failed to draw the line — essential to the safeguarding of our institutions — between the right to disagree with a particular decision, and the duty to sustain and defend the judiciary as an institution essential to freedom. Unfortunately, many of the bar have failed to appreciate that the surest way to undermine the very foundations of our system is to destroy public confidence in the honor and integrity of our courts.

In seeking underlying causes of the accelerating drift away from law and order, public apathy and indifference must rank high among such causes. Indeed, it is not too much to say that public attitudes toward morality, ethics and individual responsibility contribute significantly to the growing disrespect for law. These attitudes often go so far as to accept, if not affirmatively condone, levels of personal conduct which are marginal or clearly bad in terms of the ethics of the individual as well as the welfare of society.

Here, I am not talking about condoning of serious crime by professional criminals, as few people do this consciously. Rather, I have in mind the cynical attitude of our time which tolerates marginal and certain unlawful conduct and which leads to disrespect for law and for the rights of others.

Related to this is the lack of individual responsibility and the desire "not to become involved" which causes citizens often to tolerate the commission of crimes which they actually witness. Indeed, all too frequently those who witness a crime will aid neither the victim nor the police. On occasions this may be attributable to personal fear, but the dominant motivation seems to be a callous lack of concern for fellow human beings. The pressures and obstacles of daily living have brutalized or numbed far too many of our fellow citizens.

Another and different factor contributing to the lack of respect for law is the growing belief that laws and court decrees are to be obeyed, constitutional safeguards honored, and the rights of others respected only so long as they do not interfere with the attainment of goals believed to be just. It was seriously argued following *Brown v. Board of Education*⁹ that massive disobedience of court orders and decisions was a proper form of protest. Indeed, there were some who sincerely espoused the right of each state to interpose its own will against federal laws and decisions.¹⁰

9. 347 U.S. 483 (1954).

10. Interposition resolutions, in varying forms, were adopted in the following states: Ala. H.J.R. 18, Act 42, 1956, Spec. Sess. at 70; Fla. S. Con. Res. 17, XX.

Today there are others — with quite opposite goals — who insist with equal fervor that civil disobedience of laws deemed to be unjust is a legitimate means of asserting desired rights.

Ghandi's heroic struggle for India's independence is the precedent often cited for the doctrine of civil disobedience. Yet this technique was used in India, not as a means of enforcing recognized constitutional rights, but to attain national independence. There were no courts and no democratically established political institutions in which the issue of independence could be contested. Indeed with lawful remedies unavailable, Ghandi's alternatives were civil disobedience or bloodshed. There is no parallel situation in America where wrongs may be redressed in the courts and through established political institutions.

The frightening aspect of civil disobedience is that it tends to escalate in various ways. It spreads geographically;¹¹ the worthiness of causes becomes increasingly marginal;¹² and the lines between peaceful demonstrations, disorderly conduct and mob violence are often difficult to draw.¹³

However successful the tactics of civil disobedience may be in the short run, and whatever the justification, they are self-defeating and imperil individual freedom in the long run. Many centuries of human misery show that once a society departs from the rule of law, and every man becomes the judge of which laws he will obey, only the strongest remain free. Tyranny is the inevitable result of this form of anarchy.

Acts 1956, Spec. Sess. at 401, H.R. Con. Res. 174, Acts 1957, at 1217; Ga. H.R. 185, Laws 1956, at 642; LA. REV. STAT. ANN. 149:801-10 (Supp. 1964); S.C. J. Res. 914, Acts 1956, 49 S.C. STAT. 2172; Tenn. H. Res. 1, 9, Acts 1957, at 1437, 1449; Va. S.J. Res. 3, Acts 1956, at 1215. Attempts by the Legislature and Governor of Arkansas to evade court orders requiring desegregation were found by the Supreme Court to have been a contributing factor to the outbreak of mob violence in Little Rock. *Cooper v. Aaron*, 358 U.S. 1, 15 (1958). For a discussion of the absence of any substantial basis for the doctrine of interposition, see *Cooper v. Aaron*, *supra* at 16-19, and *Bush v. Orleans Parish School Bd.*, 188 F. Supp. 916, 922-27 (E.D. La. 1960).

11. There have been demonstrations and sit-ins in various parts of the country, with perhaps the most serious ones occurring in the North.

12. Commencing primarily as a tactic of the civil rights movement, the concept of achieving ends through the pressure of street demonstrations and sit-ins has already been applied to various other causes — some of which are difficult to define. These include demonstrations by white youths in resort towns in Oregon and New Hampshire. They also include campus riots at Berkeley which, in the end, were in support of a cause as unworthy as the asserted "right to be obscene."

13. The civil rights march on Washington, D.C. in 1962 was clearly a peaceful demonstration. The mobs in Harlem and in New Jersey in the summer of 1964 were clearly lawless. Between these two extremes, we have witnessed varying degrees of conduct. But the dangers of violence and of counter-brutality always exist.

General crime, by individuals and gangs, is attaining new peaks each year. Organized crime, for years trafficking chiefly in narcotics and illicit gambling, is now invading areas of legitimate business. It operates and flourishes largely beyond the reach of the law. Juvenile crime is a national disgrace, with more than 40 per cent of all arrests for serious offenses involving teenagers eighteen years of age or under.

The nature of crimes committed is profoundly disturbing, with crimes of violence increasing year by year. FBI figures for 1964 show a nationwide rise in serious crime of 13 per cent over 1963. Murder was up 9 per cent, aggravated assault up 18 per cent, forcible rape up 19 per cent, and robbery up 12 per cent. More than 2½ million serious crimes — a staggering total — were committed in 1964.²

For those who think this lawlessness is confined largely to urban slum areas, it may be surprising to learn that crime in suburban communities increased 18 per cent and in rural areas 9 per cent.

The single most shocking statistic, documented in FBI reports, is that since 1958 crime has been increasing five times faster than the population growth. And the trend is still upward, with a greater rate of increase each year.³

In certain sections of many of our urban areas, citizens are no longer able to enjoy the parks or indeed to walk freely on the streets at night.⁴ J. Edgar Hoover has said that "our city streets are [often] jungles of terror."⁵

When law-abiding citizens are unsafe in their homes and businesses and are denied the privilege of using public streets and parks for fear of their personal safety, we are approaching a breakdown in the first responsibility of government. This is the duty to protect citizens in their persons and property from criminal conduct — whatever its source or cause.

But the types of crime reported in FBI statistics are not the only manifestation of lawlessness in our country. Respect for law and order and a willingness of citizens generally to resolve differences by legal means are at a distressingly low ebb. This lack of respect for law and due process has manifested itself in many segments of our society.

First, it has too often tainted those charged with the duty of enforcing law and order. Illegal detention, physical abuse and brutality, suppression of evidence, entrapment and other direct violations or

2. FBI Crime Reports, release of March 10, 1965.

3. FBI figures show that the increase in 1962 over 1961 was 6%; 1963 over 1962 was 10%; and 1964 over 1963 was 13%.

4. The "crime crisis" in Washington, D.C. to cite one city's problem, is described in a recent article in U.S. News & World Report, May 24, 1965, p. 58.

5. Address by J. Edgar Hoover, National Convention of American Legion, Las Vegas, Nevada, Oct. 9, 1962.

erosions of laws or constitutional standards are sometimes committed by law enforcement officers. Whenever this occurs, whether from ignorance or misplaced zeal, our whole system for the detection and prosecution of crime is jeopardized.

In a free society, as contrasted with a totalitarian state, the police can enforce the law and apprehend its violators only with the active cooperation and support of a substantial portion of the population. This essential support is dependent in large measure on respect for the fairness as well as the efficiency of the police. The FBI deserves and enjoys this type of support at the national level. The great majority of police and law enforcement officials at all levels render fine service under many difficulties, and are entitled to genuine public respect and cooperation. But the few who deviate from these high standards bring serious discredit on others and on our system itself.

A disregard for law and its processes has also been manifested in the acts of some government officials. Defiance of laws and court decisions by high public officials, who have sworn to support the law, set examples of incalculable harm. Actual corruption, the most ancient form of lawlessness in government, is occasionally present. The Massachusetts Crime Commission recently reported: "We have observed with disgust, indignation and shame the ways in which some of the most highly placed and powerful political figures in the state have betrayed, actively or passively, the public trust."⁶

Some segments of American business and labor must bear a real responsibility for the growing disrespect for law. Far too many businessmen have ignored or flagrantly violated the antitrust laws.⁷ A similar lack of ethics and corporate morality is found among many labor leaders. Sometimes violence is condoned if not encouraged. We have even witnessed the sorry spectacle of the fraudulent count of votes in the election of a nationally known union official.⁸

Nor is this trend limited to the particular groups which I have mentioned. The malady has widely infected many segments of the population. More and more individuals, regardless of status or vocation, seem to regard laws as mere inconveniences to be evaded or flouted. Tax frauds, illicit gambling, pornography, bogus insurance claims, faked personal injuries, perjury and even the deliberate violation of traffic laws — these and many other like examples — are further evidence of the erosion of law and order within contemporary society.

6. N.Y. Times, April 11, 1965, p. 6E, col. 4.

7. In 1960 the United States instituted in the United States District Court for the Eastern District of Pennsylvania a number of criminal actions against various manufacturers of electrical equipment. The principal defendants pled guilty and were sentenced in Feb. 1961.

8. See editorial, N.Y. Herald Tribune, April 10, 1965.

We have preserved individual freedom under the Anglo-American system of law for perhaps the longest sustained period in human history. We have done so by accepting the rule of law and by adherence to lawful means. The fundamental difference between a totalitarian society, and one in which the individual is afforded freedom of conscience and protected from arbitrary force, is that "means" are of the essence. Under our system, the "end," however worthy, should never justify resort to unlawful means.¹⁹

We will continue to preserve individual freedom and protect human rights only so long as we adhere to this fundamental principle. The courts and legislative halls, rather than the streets, must be the places where differences are reconciled and individual rights are ultimately protected and secured.²⁰

There are certainly no easy solutions to these trends and attitudes which so deeply concern lawyers, and which should concern every thoughtful citizen. And yet I think most of us would agree upon the essentials: America needs a genuine revival of respect for law and orderly processes, a reawakening of individual responsibility, a new impatience with those who violate and circumvent laws, and a determined insistence that laws be enforced, courts respected, and due process followed.

At the same time, we must ever strive to eliminate injustice and discrimination; we must minimize the social and economic conditions which breed crime and unrest; and, perhaps, most important of all, we must assure adequate and equal educational opportunities.

stirred to violence when property which the law recognizes as theirs is forcibly invaded or occupied by others. . . . [T]he Constitution does not confer upon any group the right to substitute rule by force for rule by law. Force leads to violence, violence to mob conflicts, and these to rule by the strongest groups with control of the most deadly weapons."

19. Mr. Justice Douglas has said: "We reject the philosophy that the end justifies the means. The vitality of human rights means respect for procedure as well as respect for substantive rights. A court cannot render dispassionate justice in the presence of a howling mob. History shows that man's struggle to be free is in a large degree the struggle to be free of oppressive procedure." Address by Mr. Justice Douglas, Judicial Conference of the Americas, San Juan, Puerto Rico, May 25, 1963.

20. "The final answer . . . will not be found in armed confrontation but in the process of law. We have acted to bring this conflict from the streets to the courtroom." President Johnson, at his March 13, 1963, news conference as reported in the N.Y. Times, March 14, 1963, p. 62, col. 2.

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FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE NORFOLK	OFFICE OF ORIGIN BUREAU	DATE 10/26/71	INVESTIGATIVE PERIOD 10/23/71 - 10/26/71
TITLE OF CASE LEWIS FRANKLIN POWELL, JR.		REPORT MADE BY SA [REDACTED] bg b7c	TYPED BY mlb
		CHARACTER OF CASE DAPLI JUSTICE SUPREME COURT OF THE UNITED STATES	

REFERENCES:

Bureau teletype to Richmond et al dated 10/22/71;
 Richmond teletype to Bureau et al dated 10/23/71;
 Norfolk teletype to Richmond dated 10/23/71;
 WFO teletype to Bureau et al dated 10/23/71.

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CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		
							PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO

APPROVED: *[Signature]*
 SPECIAL AGENT IN CHARGE

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UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:

Report of: SA [REDACTED] ^{b6}
Date: OCTOBER 26, 1971 ^{b7c}

Office: NORFOLK, VIRGINIA

Field Office File #: 77-3497

Bureau File #:

Title: LEWIS FRANKLIN POWELL, JR.

Character: DEPARTMENTAL APPLICANT
JUSTICE
SUPREME COURT OF THE UNITED STATES

Synopsis:

Congressman [REDACTED] and former Congressman [REDACTED] did not know LEWIS FRANKLIN POWELL, JR. personally but on the basis of information they received highly recommended him. USDC Judges at Norfolk, Va. could furnish no derogatory information concerning POWELL and highly recommended him. [REDACTED] praised POWELL personally and professionally and recommended him. Members of the Virginia Judiciary praised POWELL and highly recommended him. [REDACTED] a former member of the Virginia General Assembly, advised POWELL, at the time [REDACTED] was in the Legislature, was a member of the Commonwealth Club and the Country Club of Virginia, both of which discriminate against Negroes and Jews. [REDACTED] was the only Jewish member of the General Assembly, was not invited to join these respective organizations although every other member was issued an invitation. [REDACTED] however, praised POWELL both professionally and personally and recommended him for the Supreme Court. Current and former Federal Government officials, including present [REDACTED] Norfolk, Virginia, a member of a prominent Negro family, could furnish no derogatory information concerning POWELL and those who knew him personally recommended him. [REDACTED] current Norfolk, Virginia City Councilman and civil rights advocate, could furnish no derogatory information concerning POWELL but because of his limited knowledge would not recommend. Other civil rights leaders did not know POWELL. Religious leaders did not know POWELL and could furnish no information concerning him. White attorneys in the

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Norfolk, Virginia area praised POWELL as both a gentleman and an attorney and highly recommended him. They could furnish no derogatory information about POWELL. Negro Attorney [REDACTED] the Old Dominion Bar Association, criticized POWELL by alleging that POWELL, when a member of the Richmond, Virginia School Board during the days of massive resistance (1954), acted contrary to the Grey Commission's recommendation to obey the Supreme Court and abolish segregated schools. [REDACTED] that POWELL favored school segregation under the guise of freedom of choice. [REDACTED] criticized actions by POWELL when he was Chairman of the State Board of Education and also POWELL's law firm for representing large companies in civil rights matters. [REDACTED] not recommend POWELL. Other Negro attorneys would not comment on POWELL or did not know him. Educators at Williamsburg, Virginia and Norfolk, Virginia praised POWELL and highly recommended him. [REDACTED] Colonial Williamsburg, Incorporated and [REDACTED] Virginia Bank Shares praised POWELL as an attorney who represented them and as a person. They could furnish no derogatory information concerning POWELL and recommended him. No derogatory information developed concerning POWELL at newspapers in Norfolk, Newport News, Williamsburg and Suffolk, Virginia. No arrest record for Mr. and Mrs. [REDACTED] POWELL's sister and brother-in-law at Williamsburg, Virginia. Residence of Mr. and Mrs. [REDACTED] verified through contact with [REDACTED] Colonial Williamsburg, Incorporated, Williamsburg, Virginia.

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TABLE OF CONTENTS

CURRENT AND FORMER MEMBERS OF THE UNITED STATES CONGRESS.

MEMBERS OF THE FEDERAL JUDICIARY.

FORMER GOVERNOR OF VIRGINIA.

CURRENT AND FORMER MEMBERS OF THE VIRGINIA STATE JUDICIARY.

CURRENT AND FORMER MEMBERS OF THE VIRGINIA STATE LEGISLATURE.

CURRENT AND FORMER FEDERAL GOVERNMENT OFFICIALS.

CIVIL RIGHTS LEADERS.

RELIGIOUS LEADERS.

PROMINENT WHITE ATTORNEYS

PROMINENT NEGRO ATTORNEYS.

EDUCATORS.

BUSINESS CLIENTS.

INVESTIGATION AT LOCAL NEWSPAPERS.

ARREST CHECKS.

APPENDIX.

DETAILS:

Investigation in this matter was instituted upon receipt of information from Headquarters, Federal Bureau of Investigation, Washington, D. C., which indicated that LEWIS FRANKLIN POWELL, JR. had been nominated for the position of Justice on the Supreme Court of the United States and an appropriate investigation was requested.

NF 77-3497

CURRENT AND FORMER MEMBERS OF THE
UNITED STATES CONGRESS

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JBM:mlb

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The following investigation was conducted by
Special Agent [REDACTED]

On October 25, 1971 [REDACTED]

[REDACTED] Norfolk, Virginia, member, United States House of Representatives, Second Congressional District of Virginia, advised he is not personally acquainted with LEWIS FRANKLIN POWELL, JR. of Richmond, Virginia. However, [REDACTED] advised that since publication of the nomination of Mr. POWELL by the President of the United States, [REDACTED] has received a great amount of information concerning POWELL's background and career, all of which has been extremely favorable. [REDACTED] reiterated that he could not speak from personal knowledge of POWELL but from making numerous contacts both in Washington, D. C. and in Southside, Virginia, he had been unable to determine any derogatory information concerning POWELL.

[REDACTED] also indicated that no names of any individuals who proposed to actively oppose POWELL's nomination have come to his attention. [REDACTED] stated that on the basis of what he has read and heard about POWELL, he feels he is eminently qualified for the position of Justice of the Supreme Court of the United States and he would recommend him without qualification.

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NF 77-3497

JBM:mlb

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The following investigation was conducted by
Special Agent [REDACTED] on October 26, 1971:

[REDACTED], retired member of the
United States House of Representatives, Second
Congressional District of Virginia, was interviewed
at the Merchants and Farmers Bank Building, Crawford
Street, Portsmouth, Virginia. Mr. [REDACTED] advised
that he does not know LEWIS FRANKLIN POWELL, JR.
personally but that since his nomination everything
he has heard about POWELL has been favorable. [REDACTED]
could not comment on POWELL from first hand
knowledge.

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NF 77-3497

MEMBERS OF THE FEDERAL JUDICIARY

NF 77-3497

JPB:mmp

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On October 25, 1971, the Honorable ~~WALTER E. HOFFMAN~~, Chief Judge, United States District Court, Eastern District of Virginia, Norfolk, Virginia, advised Special Agent [REDACTED] that he has been acquainted with LEWIS F. POWELL, JR., since 1928 and that they attended Washington and Lee University together. Judge HOFFMAN prefaced his comments by stating that the President could not find a better man anywhere in the country to fill a vacancy on the United States Supreme Court than LEWIS F. POWELL, JR. He stated that POWELL is a great man in every respect and that his reputation and character are impeccable. He stated that he has been closely associated with POWELL for many years, and has never seen him do anything whatsoever "out of line" in any respect. He stated that POWELL is a scholar and an absolutely brilliant individual. He stated that POWELL is the type of individual who thinks before he speaks and does not speak unless and until he knows exactly what he is talking about.

HOFFMAN stated that POWELL is an outstanding attorney in every respect and possesses the ability and temperament to develop into one of the greatest Supreme Court Justices. He stated that POWELL's integrity and loyalty to the Government are absolutely above reproach. He advised that POWELL is completely trustworthy and that it is his opinion that POWELL's appointment to the United States Supreme Court would benefit the Court and the entire country.

Judge HOFFMAN made available a copy of a brief for the Commonwealth of Virginia filed as amicus curiae in the Charlotte - Mecklenburg Board of Education case. HOFFMAN stated that this brief was written by LEWIS F. POWELL, JR., and is completely illustrative of POWELL's thoughts in civil rights matters especially as they pertain to education matters. He stated that with

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respect to racial matters in the field of education, POWELL is a strong believer that the doctrine of separate but equal is completely unfair and erroneous and that when used in that context, the terms "separate" and "equal" are mutually exclusive. Judge HOFFMAN stated that he knows that POWELL was adamantly opposed to the massive resistance laws set out by the Virginia Legislature several years ago, which, in part, dealt with racial segregation in public schools.

In conclusion, Judge HOFFMAN reiterated that it was his opinion that no better candidate could be found anywhere for consideration for appointment to the United States Supreme Court than LEWIS F. POWELL, JR.

A copy of the above brief is included in the appendix of this report.

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On October 25, 1971, the Honorable [REDACTED] United States District Judge, Eastern District of Virginia, Norfolk, Virginia, advised Special Agent [REDACTED] that he has been acquainted with LEWIS F. POWELL, JR., for 20 to 25 years and has always found him to be an individual with outstanding traits of character, reputation, loyalty, and ability. Judge [REDACTED] stated that POWELL is an outstanding attorney in every respect and most certainly has the training and ability to qualify him as a great jurist. He advised that POWELL is, in his opinion, an outstanding candidate to fill a vacancy on the United States Supreme Court. He advised that POWELL's temperament is equal to that of any judge that he knows and that he possesses a tremendous ability to withhold any spontaneous comments on a given subject until he is well versed in that matter and is able to speak with authority. With respect to POWELL's leanings in civil rights matters, Judge [REDACTED] described him as "a moderate". Judge [REDACTED] explained that by moderate, he meant "middle of the road" in that he had the ability to grasp both sides of the racial situation and arrive at a conclusion fair to each side. Judge [REDACTED] stated that his opinion of POWELL's attitude in racial matters is more hearsay, that is, results of reading about same in newspapers and other periodicals.

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Judge [REDACTED] concluded by saying that he has never worked directly with POWELL on any type of a committee or commission, however, in view of his personal knowledge of POWELL and what he has read and heard about POWELL over the last two decades, he is confident that POWELL would be an outstanding addition to the United States Supreme Court.

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On October 25, 1971, the Honorable [REDACTED] United States District Judge, Eastern District of Virginia, Norfolk, Virginia, advised Special Agent [REDACTED] that he has known LEWIS F. POWELL, JR., for about 25 years, however, has come to know him quite well during the past 15 years. Judge [REDACTED] stated that he is better acquainted with POWELL's brother, [REDACTED] and, through his association with [REDACTED] had become acquainted with LEWIS. Judge [REDACTED] stated that POWELL's character, reputation, and loyalty are unquestionable and that his ability as an attorney is unsurpassed. Judge [REDACTED] stated that he has always been highly impressed with POWELL's ability to consider everything in any given situation before he speaks on that subject and then speaks only when he is quite sure of the facts of all the surrounding circumstances regarding that matter. He stated that POWELL's temperament is outstanding for anyone intending to serve in a judicial capacity and he is confident that POWELL would exercise considerable judicial restraint.

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Judge [REDACTED] stated that for a Southerner, POWELL is probably more moderate, that is, more open-minded in civil rights matters than his contemporaries from the South. He stated that POWELL departed from the Commonwealth of Virginia's view of segregation when he strongly opposed the so-called massive resistance laws at which time POWELL indicated that a quality education for all individuals was the prime factor which should be considered.

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Judge [REDACTED] stated that he is confident that POWELL possesses splendid judicial ability and he knows that POWELL is unequalled in his thoroughness for researching complicated matters and arriving at fair and equitable conclusions.

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Judge [REDACTED] concluded by noting that it was his opinion that POWELL was the best nominee for the United States Supreme Court and that he has known him for many years.

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[REDACTED] OF VIRGINIA

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JPB:mmp

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On October 25, 1971, the Honorable [REDACTED] Attorney at Law, and [REDACTED] of the Commonwealth of Virginia [REDACTED] advised Special Agent [REDACTED] that he has been acquainted with LEWIS F. POWELL, JR., for approximately 25 years. He described POWELL as an individual who possesses solid character and reputation, both of which are above reproach. He stated that he has been closely associated with POWELL for many years and that POWELL possesses outstanding personal traits of honesty, integrity, loyalty, and ability as an attorney. He stated that there is no doubt in his mind that POWELL is a superb candidate for the United States Supreme Court.

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Mr. [REDACTED] advised that he and POWELL served together for about [REDACTED]

[REDACTED] or which the last year or so POWELL served in the capacity of chairman of that board. He advised that more recently, he and POWELL terminated a "tour" together on the [REDACTED]

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He stated that he has never known or even heard anything remotely suggesting that POWELL ever did anything in an "underhanded manner". He stated that POWELL is one of the most respectable and respected individuals whom he has ever had the pleasure to know. He advised that POWELL was truly a scholar in every respect and possesses splendid judicial ability and ideal temperament to serve in a judicial capacity. He advised that it is obvious to him that POWELL's acceptance for the tedious task of serving on the United States Supreme Court results from the man's sheer dedication to his country. He advised that POWELL's service on that Court would be admirable.

Mr. [REDACTED] stated that with respect to POWELL's leanings in civil rights matters, that POWELL always has been particularly concerned in having every man protected by law and secure to every individual the fullest possible freedom. He stated that POWELL's

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JPB:mmp

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views in this matter were made clear when he openly and strongly opposed the Virginia massive resistance laws indicating that quality and equal education for all individuals should be the prime consideration in any discussion along those lines.

Mr. [REDACTED] concluded by restating his confidence that POWELL's candidacy for the United States Supreme Court was nothing less than outstanding.

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CURRENT AND FORMER MEMBERS OF THE
VIRGINIA STATE JUDICIARY

NF 77-3497

WLC:mhb

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The following investigation was conducted by
SA [REDACTED]

has
On October 26, 1971, Judge [REDACTED] Suffolk
Circuit Court, Suffolk, Virginia, advised that he had known
Mr. LEWIS FRANKLIN POWELL through the years and considered
him an excellent attorney. He advised he knows of no one
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b7c who has any complaints against Mr. POWELL and considers him
a very ethical man. Judge [REDACTED] also considered Mr. POWELL
to be of high caliber. He advised he knew nothing derogatory
toward the man and as far as civil rights matters were concerned,
he knew Mr. POWELL was Chairman of the Richmond School Board
which he believes should speak for itself. He advised that
he would highly recommend LEWIS FRANKLIN POWELL as a member
of the U.S. Supreme Court.

On October 26, 1971, [REDACTED] Judge, Corporation Court, City of Chesapeake, Virginia, [REDACTED] Chesapeake, Virginia, advised that he did not know the appointee personally nor has he had any association with the appointee on a professional level with the following exception. Mr. [REDACTED] stated that in 1958 he was a member of the State Commission on Public Education and that during that year, the appointee who was the Chairman of the Richmond School Board made a presentation to the State Commission regarding the education system in Russia. Mr. [REDACTED] noted that the appointee had just returned from Russia and made a very favorable presentation to the State Commission regarding educational systems in both the United States and Russia. [REDACTED] stated this is the only contact he has had with the appointee.

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Mr. [REDACTED] further advised that he did not have any knowledge that would reflect unfavorably upon appointee's professional background, character, associates or reputation of his associates. He stated that the only knowledge he has of the appointee is favorable, noting it was based only on conversation with other individuals as well as what he read in the newspaper. He further advised that based on his very limited association, he felt that the appointee was a loyal American citizen. [REDACTED] stated that he knew of no reason why he could not recommend the appointee since he was not aware of any derogatory information regarding the appointee.

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POB:jbd

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The following investigation was conducted
by SA [REDACTED] on October 25, 1971:

[REDACTED] Virginia Supreme Court, [REDACTED]
Norfolk, Virginia, advised he was appointed to the
Virginia Supreme Court in 1934 and served as [REDACTED]

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Judge [REDACTED] said he has known the appointee for
nearly the entire period that he served on the
Virginia Supreme Court. Although he was not
acquainted with the appointee personally, the appointee
appeared before the Virginia Supreme Court on numerous
occasions while Judge [REDACTED] sat as a Justice.
The appointee was described as an astute and capable
lawyer and is considered to be one of the foremost
attorneys in the State of Virginia. The appointee is
a quiet, dignified and reserved individual of unquestionable
character, associates and reputation. Judge [REDACTED]
said the appointee has represented clients involving
many important cases which were presented to the Virginia
Supreme Court. The appointee writes excellent briefs
and presents good arguments. Judge [REDACTED] advised
he could not recall whether the appointee had ever
appeared before the Virginia Supreme Court in connection
with any civil rights litigation. Judge [REDACTED]
stated that one of his lawyer partners was [REDACTED]
[REDACTED] and was one of the principal attorneys in the
massive resistance school desegregation case of which
Judge [REDACTED] wrote the majority opinion and declared
massive resistance unconstitutional. Judge [REDACTED]
felt the appointee was an open-minded individual and
to his knowledge would have no prejudices concerning
race, creed or color.

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Judge [REDACTED] believed the appointee possessed
the proper temperament which would be required of an
individual appointed to serve as a U. S. Supreme Court
Justice. He felt the appointee was extremely qualified
and would recommend him for the appointment without
reservations. Judge [REDACTED] felt that the appointee
was a loyal American.

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GHL:bld

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The following investigation was conducted by
SA [REDACTED]:

Judge O. VERNON SPRATLEY, Virginia National Bank Building, King and Queen Streets, Hampton, Virginia, on October 26, 1971, advised that he is 89 years of age and served on the Supreme Court of the State of Virginia from 1936 until 1967 when he retired.

Judge SPRATLEY stated that he has known LEWIS FRANKLIN POWELL, JR., over 30 years socially, personally and professionally.

He stated that POWELL is a fine man of character and that he knows no one better qualified to serve on the Supreme Court of the United States than POWELL.

Ordinarily Judge SPRATLEY stated he would want to see a man on the Supreme Court with judicial experience; however, POWELL's many qualities override this, and he is truly an outstanding nominee.

Judge SPRATLEY stated that he has just completed writing a letter of congratulations to POWELL in which he pointed out that in the language of the street, the President "hit the jackpot" with his nomination.

Judge SPRATLEY stated that POWELL is a considerate, compassionate and even-tempered individual. He stated he has heard him argue many cases and has never known him to lose his temper.

POWELL is absolutely fair-minded to all races, creeds and religions. He did not lose his head when the late Senator HARRY FLOOD BYRD suggested massive resistance to integration of public schools. Judge SPRATLEY stated that POWELL did not swallow this massive resistance plan.

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GHL:bld

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Judge SPRATLEY stated again that he applauds the nomination of POWELL and added that President NIXON could not have picked a better man to serve on the Supreme Court. He expressed his belief that POWELL will be a credit to the Court.

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BHW:blb

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The following investigation was conducted by SA [REDACTED] on October 25, 1971:

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[REDACTED] Virginia State Supreme Court of Appeals, Citizens Trust Building, Portsmouth, Virginia, advised he has known LEWIS FRANKLIN POWELL, JR., for more than thirty years. He has known him well for that period of time, having both professional and social contact with him. He knows of no attorney with more professional ability or better qualifications. His integrity and character are beyond question and are considered by all in the legal profession to be outstanding.

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[REDACTED] related that one of POWELL's greatest assets and qualifications for the Supreme Court is his judicial temperament. He related that POWELL is very deliberate in his thinking and actions and is not emotional or excitable. His able mind penetrates to the very heart of an issue and only after having given the matter all due deliberation does he express his conclusions.

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[REDACTED] related that POWELL's credentials are impeccable as a Supreme Court nominee and that if appointed, he would bring great credit to the Supreme Court. He said that if POWELL was appointed to the Supreme Court, there would be great hope for our country. [REDACTED] said he has never heard one detrimental word spoken by anyone of POWELL and that POWELL is held in high regard by the American Bar Association (ABA). He related that after POWELL's tenure as President of the ABA, he did not fade away but has served as an adviser to them and has been very active ever since. POWELL is characteristically a dedicated and loyal man and has served on committees and organizations with willingness and dedication.

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[REDACTED] related that POWELL has a moderate view of civil rights matters. He was opposed to the massive resistance by the State of Virginia approximately 13 years ago when they were going to shut down the schools in Virginia rather than integrate. POWELL felt that freedom of choice was the ideal solution and all that was required by the United States Constitution. [REDACTED] advised

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BHW:bld

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that POWELL is not racially prejudiced and believes in achieving a balance between the races. POWELL considers each case on its own merits in regard to race and does not prejudge situations by a too simple philosophical cliché.

POWELL belongs to two clubs that [REDACTED] knows about, one being the Commonwealth Club of Virginia which does not have any Negro members. [REDACTED] said he is a member of the same club as is the bench of the Supreme Court of Appeals of Virginia, and the club has no clause prohibiting Negroes to his knowledge. He said the other club is the Country Club of Virginia; however, [REDACTED] while this is all white in its present membership, [REDACTED] could not say whether it was so because of a racial exclusionary clause.

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[REDACTED] said that in regard to criminal matters, POWELL believes there should be more of a balance between society's rights and those of the individual. Again, he said POWELL would decide these matters on a case-by-case basis, without preconceived notions. POWELL's practice of law has been mainly in the corporate field and [REDACTED] indicated that during this time, POWELL has had a great deal of trial experience also, and is no stranger to the courtroom.

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[REDACTED] said that there is no other individual whom he knows that he feels is more qualified both in character and ability to serve on the Supreme Court of the United States than LEWIS FRANKLIN POWELL, Jr.

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NF 77-3497

CURRENT AND FORMER MEMBERS OF THE
VIRGINIA STATE LEGISLATURE

The following investigation was conducted by
SA [redacted] at Norfolk, Virginia, on October 26,
1971:

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[redacted] Attorney, [redacted] Norfolk, Virginia, advised he has known the appointee since 1960. He was associated with the appointee when he was a member of the Virginia General Assembly and also through work with the Alumni Association of Washington and Lee University. He stated that the appointee is active in alumni affairs at Washington and Lee and is also a member of the Board of Trustees.

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Mr. [redacted] stated that he considers the appointee to be one of the best attorneys in the State of Virginia. He is very well qualified and possesses excellent experience and the right judicial philosophy for a seat on the Supreme Court of the United States. In addition to the above, the appointee also has compassion and is completely objective in all matters. Mr. [redacted] stated that the appointee is fair and just and "would call it as he sees it" and should not be considered a liberal or conservative because he would decide a matter based only on its merits and not upon a particular political leaning such as liberal or conservative.

Mr. [redacted] felt that the appointee would never judge anyone because of his race, creed, or color and would be able to render a fair and honest decision in any matter which came before the Supreme Court.

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Mr. [redacted] stated that the appointee is considered to be an individual of the highest character, associates, and reputation and is unquestionably a loyal American citizen. He felt that the appointee was an excellent choice for the United States Supreme Court and is exceptionally well qualified professionally and possesses the necessary judicial temperament to handle this position. The appointee is considered to be an exceptional scholar and does his own preparation and presentation of his cases. Mr. [redacted] stated that this is rather unusual in a large firm as there are usually other attorneys who prepare cases for the prominent members.

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POB:lld/hjt
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Mr. ██████ said that the appointee was a member of the Commonwealth Club and the Country Club of Virginia, both of which discriminate against Negroes and people of Jewish descent. Mr. ██████ stated that he knows this is a practice as when he was a member of the General Assembly all members of the Assembly were invited to join these respective organizations but Mr. ██████ was excluded because of his Jewish extraction. Mr. ██████ stated, however, that because the appointee is a member of these organizations it does not diminish his feeling toward the appointee, nor did Mr. ██████ feel it would have any bearing on his judgment or his open-mindedness. Mr. ██████ felt that if the appointee were in a position to correct a situation such as this, he would certainly take appropriate steps to do so.

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Mr. ██████ highly recommended the appointee for a position on the U. S. Supreme Court without reservation.

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WLC:mhb

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The following investigation was conducted by
SA [REDACTED]:

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On October 26, 1971, Mr. [REDACTED] member of the House of Delegates, Drewryville, Virginia, advised that he did not know LEWIS FRANKLIN POWELL personally but had met him on numerous occasions in the past 15 years. He advised that he considered him a highly qualified man and would be excellent as a member of the U.S. Supreme Court. He advised he had no derogatory information concerning Mr. POWELL. He advised he could not further comment on the gentleman due to the fact he did not know him that well. He advised he would highly recommend LEWIS FRANKLIN POWELL.

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WRK:hjt

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The following investigation was conducted in Norfolk, Virginia, by Special Agent [REDACTED] on October 26, 1971:

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[REDACTED] Professor of History, Norfolk State College, Norfolk, Virginia, who is an [REDACTED] advised that he is not familiar with LEWIS FRANKLIN POWELL, JR. [REDACTED] stated that all he knows about POWELL he has learned through public news media.

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CURRENT AND FORMER FEDERAL GOVERNMENT
OFFICIALS

NF 77-3497

JBM:mlb

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The following investigation was conducted on
October 28, 1971 by Special Agent [REDACTED] at
Norfolk, Virginia:

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[REDACTED]
Eastern District of Virginia, Norfolk, Virginia,
advised that he does not know LEWIS FRANKLIN
POWELL, JR. and could furnish no information about him,
nor could he comment on POWELL's personal or
professional background.

The following investigation was conducted by SA [REDACTED] on October 26, 1971:

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[REDACTED] Norfolk, Virginia, Virginia National Bank Building, Norfolk, Virginia, advised that although he has known Mr. LEWIS F. POWELL, JR., for some ten to fifteen years, he has not been too closely associated with Mr. POWELL during this period. Mr. [REDACTED] continued in stating as follows:

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He had not had the opportunity to be in court with Mr. POWELL; however, he had attended seminars where Mr. POWELL was the principal lecturer. He could not recall specifically the occasion but he was almost certain that the seminars were held at the University of Virginia in Charlottesville, Virginia, several years ago. Mr. [REDACTED] recalled that he had attended social functions where Mr. POWELL was present or had been the host. Mr. [REDACTED] indicated also that he did not know other members of the POWELL family.

Mr. [REDACTED] described Mr. POWELL as a scholar and a gentleman and he felt that Mr. POWELL's presence on the Supreme Court would lend prestige to that body. He said that men of the legal profession and others in the State have the highest regard for Mr. POWELL and his legal qualifications. He further described Mr. POWELL as a person of high moral character, integrity, intelligence, possessing a great deal of ability. He indicated that Mr. POWELL, being the former President of the American Bar Association, had fulfilled this position in an outstanding manner. He said that Mr. POWELL was an excellent administrator while President of the American Bar Association.

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Mr. [REDACTED] said he felt that Mr. POWELL's demeanor and his outstanding legal mind would be an asset to the Supreme Court.

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Mr. ██████ said he did not know of any organizations other than the American Bar Association and the Association of Trial Lawyers with which Mr. POWELL may be affiliated. Mr. ██████ said he would recommend Mr. POWELL highly for the position for which he has been nominated--U. S. Supreme Court Justice.

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On October 25, 1971, [REDACTED] Attorney at Law and [REDACTED] advised Special Agent [REDACTED] that he is only casually acquainted with LEWIS P. POWELL, JR. He stated that he first met POWELL during his tenure as [REDACTED] and has only met him personally on a few occasions since that time. He stated that he, of course, has known of POWELL for many years and has never heard anything which could be construed as being detrimental in any way about POWELL. Mr. [REDACTED] stated that in view of the above, he would be unable to comment regarding his personal knowledge of POWELL; however, it appears that all indications suggest that POWELL is probably the conservative type, that is, opposed to any new, radical steps in any field whatsoever.

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Mr. [REDACTED] stated that he is confident that POWELL's candidacy for the United States Supreme Court is an excellent choice.

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The following investigation was conducted by SA [REDACTED]:

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Attorney [REDACTED] Newport News, Virginia, advised on October 25, 1971, that he was the [REDACTED]

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[REDACTED] stated that he has known POWELL casually for 30 years and has known him well since 1953-54 in connection with POWELL's being the General Counsel for Colonial Williamsburg, Incorporated, Williamsburg, Virginia. [REDACTED] stated that [REDACTED]

He stated that POWELL still is the General Counsel for Colonial Williamsburg, Incorporated.

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[REDACTED] stated that legally speaking, he has not had a great deal of contact with POWELL since 1961. He believes that POWELL is eminently well qualified in all respects to be a Justice on the United States Supreme Court. POWELL has an excellent legal mind and is completely objective on all issues. [REDACTED] stated that he has never, at any time, detected any racial or religious prejudices on the part of POWELL. DR

He advised that POWELL's family and domestic situations are beyond reproach.

POWELL is a quiet, unassuming individual and in [REDACTED] opinion, President NIXON could not have made a better choice for the Supreme Court than POWELL.

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POWELL has a sister, Mrs. [REDACTED] who resides with her husband, a retired attorney, in Williamsburg, Virginia. No unfavorable information of any kind has been received about Mr. and Mrs. [REDACTED]

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POB:jbd

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The following investigation was conducted
by SA [REDACTED] on October 25, 1971:

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[REDACTED] Norfolk,
Virginia, advised that he does not know the appointee
personally nor has he ever had occasion to be associated
with the appointee on a professional basis.

[REDACTED]
advised that he has only heard of favorable comments
concerning the appointee's professional ability and
knowledge. [REDACTED] did
say that from what he has read the appointee has most
extensive background in corporate law and is considered
to be conservative.

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[REDACTED] declined
to make a recommendation regarding the appointee since
he was not familiar with the appointee's qualifications.

NF 77-3497

CIVIL RIGHTS LEADERS

The following investigation was conducted by
Special Agent [REDACTED]

On October 26, 1971, [REDACTED]

Attorney [REDACTED]
Norfolk, Virginia, advised his contact with and knowledge of LEWIS FRANKLIN POWELL, JR., is very limited. He advised he first became acquainted with Mr. POWELL in 1958 or 1959, in Petersburg, Virginia, when they opposed each other in a court proceeding. Mr. [REDACTED] advised his contact with Mr. POWELL since that time has been extremely limited.

Mr. [REDACTED] advised although he does not know Mr. POWELL very well personally, he considers him to be a person who appears to be of high moral character. He advised Mr. POWELL enjoys an excellent reputation. Mr. [REDACTED] advised he has never heard or known anything of a derogatory nature about Mr. POWELL. Mr. [REDACTED] stated he had no knowledge of Mr. POWELL's associates and could not comment on them. Mr. [REDACTED] advised he assumes Mr. POWELL is a loyal United States citizen and added that he never heard anything about him to lead him to believe otherwise.

Mr. [REDACTED] advised he has no personal knowledge of Mr. POWELL's views regarding civil rights, however, he has heard that Mr. POWELL is very conservative regarding those matters. Mr. [REDACTED] stated he has no evidence to support that statement. He advised in his limited contact with him, Mr. POWELL has appeared to be a very fair-minded individual.

Mr. [REDACTED] advised he has no personal knowledge of any of the organizations to which Mr. POWELL might belong other than the Virginia State Bar of which he, [REDACTED] is also a member.

Mr. [REDACTED] advised based upon his knowledge of Mr. POWELL and the information available to him concerning him, he feels POWELL is a very capable individual. Mr. [REDACTED] added he does not feel he knows enough about Mr. POWELL to recommend him for a position of trust and confidence with the United States Government.

NF 77-3497

POB:jbd

1

The following investigation was conducted
by SA [REDACTED] on October 25, 1971:

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b7C

Mrs. [REDACTED]
[REDACTED] Norfolk, Virginia, advised she is currently
a member of the Board of Education of the City of
Norfolk, Virginia, and has been associated with the
school desegregation problems in Norfolk for over the
past twenty years. Mrs. [REDACTED] stated that through her
association with school problems in Norfolk, she has
never come in contact with the appointee, nor has she
ever met the appointee. She said that since she was not
familiar with the appointee, she could not make any
recommendation as to his qualifications, or to his
character, associates or reputation.

NF 77-3497

RELIGIOUS LEADERS

NF 77-3497

HAW:mlb

1

The following investigation was conducted by
Special Agent [REDACTED] on October 26, 1971 at
Norfolk, Virginia:

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b7c

Dr. [REDACTED]
[REDACTED]
[REDACTED] Norfolk, Virginia, advised on October 26,
1971 that he has never heard of the nominee, and
stated that he was unaware that President NIXON had
nominated LEWIS F. POWELL, JR. to the Supreme Court.

NF 77-3497

RWH:lld

1

The following investigation was conducted by
SA [REDACTED]

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b7c

On October 26, 1971, Mr. [REDACTED]
[REDACTED] B'Nai Brith Lodge, Norfolk, Virginia, advised
that he is not acquainted with LEWIS FRANKLIN POWELL, JR.,
and could make no comment concerning him.

NF 77-3497

PROMINENT WHITE ATTORNEYS

NF 77-3497

DGF:mlb

1

The following investigation was conducted on October 26, 1971 at Norfolk, Virginia by Special Agent [REDACTED]

[REDACTED] Attorney at Law, Virginia National Bank Building, Norfolk, was contacted and he furnished the following information.

He is currently [REDACTED] the Norfolk & Portsmouth Bar Association.

He is not personally acquainted with LEWIS FRANKLIN POWELL, JR. and has never met him either socially or in a professional capacity. He would, however, state that he "knows him by his excellent reputation". He feels POWELL is neither a liberal nor a conservative lawyer but from reputation could be described as a "conventional attorney" who would deal ultra fairly with any case which might be brought before him for adjudication. [REDACTED] noted that his firm and POWELL's firm in Richmond, Virginia have associated on several corporate type cases and that there has always been an excellent relationship between the firms. [REDACTED] stated he could furnish no derogatory information about POWELL. From reputation, POWELL is known to be expertly qualified as an attorney. In view of this, [REDACTED] stated he would recommend POWELL for a position as a Justice on the Supreme Court of the United States.

OK

The following investigation was conducted by
SA [REDACTED]

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b7c

On October 26, 1971, Mr. [REDACTED] Attorney, [REDACTED] Norfolk, Virginia, advised that he has known LEWIS FRANKLIN POWELL, JR., for approximately ten years. He advised that he has known POWELL primarily through his practice of law although he has spent some time with him on a social basis.

He advised that Mr. POWELL is a perfect gentleman in every respect and described him as having an impeccable character. He advised that Mr. POWELL enjoys an outstanding reputation and described him as being an outstanding U. S. citizen. Mr. [REDACTED] stated that he has never known or heard anything which would lead him to question Mr. POWELL's loyalty to the United States. He added that he has never heard anything of a derogatory nature concerning Mr. POWELL or any member of his family.

Mr. [REDACTED] advised that Mr. POWELL associates with people of equally outstanding character and reputation and that he has never known him to associate with anyone that would in any way bring any form of embarrassment to himself or his family.

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Mr. [REDACTED] advised that he is affiliated with the American Civil Liberties Union in the Norfolk, Virginia, area [REDACTED]

He added, however, that he is not a member of the organization. Mr. [REDACTED] stated that he has no personal knowledge of Mr. POWELL's attitude and opinions regarding civil rights matters; however, from what he has read about him in the newspaper recently, it appears to him that Mr. POWELL is a strong advocate of law and order.

Mr. [REDACTED] described Mr. POWELL as being an extremely competent and capable attorney and stated that

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RWH:lld

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he would not hesitate to highly recommend him for a position of trust and confidence with the U. S. Government.

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b7c

Mr. [REDACTED] added that he was not aware of any organizations which Mr. POWELL might be a member of other than professional groups.

NF 77-3497

DRR:ljf

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On October 26, 1971, [REDACTED]

[REDACTED] Virginia, furnished the following information concerning LEWIS FRANKLIN POWELL, JR.; to SA [REDACTED]

He met Mr. POWELL about ten years ago at which time he found him to be a neat appearing and very personable individual. POWELL is a highly competent attorney and is highly regarded throughout this area. He and POWELL have been associated together in the Virginia State and American Bar Associations. Although his contacts with Mr. POWELL have been extremely limited, he recognizes the outstanding intellectual ability of POWELL and feels he would be a needed asset to the Supreme Court of the United States. [REDACTED] stated he would highly recommend POWELL without any reservations whatsoever.

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NF 77-3497

DGF:mlb

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The following investigation was conducted on October 25, 1971 at Norfolk, Virginia by Special Agent [REDACTED]

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b7c

[REDACTED] Attorney at Law, Virginia National Bank Building, Norfolk, was contacted and advised he has known LEWIS FRANKLIN POWELL, JR. in a professional capacity for several years. He noted that POWELL is, in his estimation, beyond reproach insofar as morals, character, loyalty and qualifications as a lawyer are concerned. He is aware that POWELL is being considered for a position as a Supreme Court Justice. [REDACTED] stated that he feels that POWELL would be beyond reproach insofar as his fairly considering all matters which might come before him in a judicial capacity if appointed. He felt that POWELL would weigh all of the equities in each individual matter whether it be criminal, civil or any other type, even though the bulk of his legal experience has been in the corporate field.

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b7c

[REDACTED] advised he is not acquainted with POWELL socially at all. He has heard that POWELL is somewhat aloof socially, but that this has no bearing on his professional relationships. He felt POWELL is a very highly motivated and competent attorney. In summing up his comments, [REDACTED] advised that he would highly recommend POWELL for a position as a Justice of the Supreme Court of the United States.

NF 77-3497

WLC:mhb

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The following investigation was conducted by
SA [REDACTED]

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b7c

On October 26, 1971, [REDACTED] Practicing Attorney, Suffolk, Virginia, advised he did not know LEWIS FRANKLIN POWELL personally but knew that he had been born and lived a few years in Suffolk, Virginia. Mr. [REDACTED] advised that he knew Mr. POWELL was a member of the Board of Education in Richmond, Virginia, and knew of his excellent work. Mr. [REDACTED] advised he knew nothing derogatory toward LEWIS FRANKLIN POWELL. He advised that as far as he knew of the gentleman, he would recommend him for an appointment to the U.S. Supreme Court.

NF 77-3497

WLC:mhb

1

The following investigation was conducted by

SA [REDACTED]

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b7c

On October 26, 1971 [REDACTED] Practicing Attorney, Suffolk, Virginia, advised that he had gone to school with LEWIS FRANKLIN POWELL's sister. He advised that he considered the entire family of excellent character. He further advised that Mr. POWELL lived in Suffolk, Virginia, until he was approximately 11 years old when the family moved to Richmond, Virginia. He advised he did not know Mr. POWELL personally but had followed him in the newspapers through the years. He advised he would highly recommend him for an appointment to the U.S. Supreme Court.

NE 77-3497

HLC:lld

1

The following investigation was conducted by
SA [REDACTED] on October 26, 1971:

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b7c

Mr. [REDACTED] a lawyer in the law firm of Rixey and Rixey, 1000 Maritime Tower, Norfolk, Virginia, advised that he is a member of [REDACTED]. He advised that he has known the nominee casually for about 15 years on a social basis through the American Bar Association. He advised that he has never had the occasion to work with the nominee on a professional basis, therefore, could make no comments from personal experiences; however, many times and especially recently when POWELL was announced by the President as a nominee for the U. S. Supreme Court, many lawyers and other citizens have talked to him about the potential of the nominee. These people have all made very favorable remarks concerning the nominee's ability, character, integrity, and loyalty. None of these people have made any remarks which would in any way criticize the nominee. They all consider him to have a very good reputation as to his morals and character and as to his proficiency as a lawyer. They all have highly recommended the nominee to Mr. [REDACTED]. They have all made remarks to the effect that the nominee was not prejudiced or biased toward any race, creed, or color. Mr. [REDACTED] concurred with them and highly recommended the nominee for a position on the U. S. Supreme Court.

NF 77-3497
HLC:lld/bld

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b6 SA [REDACTED] The following investigation was conducted by
b7C [REDACTED] on October 26, 1971:

Mr. [REDACTED] Lawyer with the law firm of Ansell, Butler and Canada, 4336 Virginia Beach Boulevard, Virginia Beach, Virginia, advised that he is a member of [REDACTED]. He advised that he was not personally acquainted with the nominee, but on many occasions has dealt with the nominee's law firm in Richmond, Virginia. All of these dealings were honorable. He advised that several of his fellow law school graduates are members of the nominee's law firm. He advised that he has met the nominee at the Bar Association meetings but does not know him well enough to say that he is personally acquainted with the nominee. He advised that according to many of the lawyers and citizens in the Norfolk-Virginia Beach area that he has talked with concerning the nominee, the nominee is very highly regarded, and many of these people have highly praised the nominee for his integrity, ability and character. They have all considered him well qualified and highly recommended him for the position in the United States Supreme Court. He advised that from these remarks there was no question in his mind as to how the nominee would treat persons who would come before him in the Court. He felt that the nominee was unprejudiced and very fair in his dealings with all races, creeds or colors. He highly recommended the nominee to be a United States Supreme Court Justice. ON

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JJC:ghf:mlb

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26
b7c

Mr. [REDACTED] Attorney and Democratic Party
Nominee for the Virginia House of Delegates, [REDACTED]
[REDACTED] Virginia Beach, Virginia, advised ASAC JOHN J.
CONEYS on October 26, 1971, that he does not personally know
POWELL, but as a member of the American Bar Association
knows of him as a former president of the Association. He
said also that when he attended the University of Richmond
Law School, he recalls that POWELL addressed his class on
one occasion. He also in his practice has dealt with
POWELL's law firm but never personally with POWELL. He
described POWELL as much respected and anything that he
knew about him was basically favorable. He knows of no
prejudices on the part of POWELL and considers him of
the frame of mind that he is committed to what he believes
to be right. He considers him of the highest reputation,
an intellectual type, and one who is moderate in his
views.

NF 77-3497

PROMINENT NEGRO ATTORNEYS

NF 77-3497

GHL:bld

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The following investigation was conducted by

SA [REDACTED]

Attorney [REDACTED]

[REDACTED] Hampton, Virginia, on October 25, 1971, advised that he is [REDACTED] the Old Dominion Bar Association which is a state-wide organization of predominantly black lawyers. The organization has no office as such and numbers about 80 members.

[REDACTED] that he does not know LEWIS FRANKLIN POWELL, JR., personally and has never met him. He stated, however, that he has polled over half of the members of the Old Dominion Bar Association, not all of them directly, and has ascertained that the organization is generally not pleased with POWELL as a nominee for the Supreme Court of the United States.

[REDACTED] that [REDACTED] a black attorney in Richmond, has made a statement to the press which could be construed as favorable; however, [REDACTED] has been quick to emphasize he is unhappy with the so-called conservative imbalance which was to exist on the Supreme Court should POWELL and [REDACTED] be appointed.

He stated that the main objections to the appointment of POWELL to the United States Supreme Court by the Old Dominion Bar Association are as follows:

1. POWELL, when a member of the Richmond, Virginia, School Board during the days of massive resistance (1954), acted contrary to the Grey Commission's recommendation to obey the Supreme Court and abolish segregated schools.

POWELL was for public schools but segregated under the guise of freedom of choice. He stated that one incident has been brought to his attention that while

NF 77-3497

GHL:bld

2

a member of the School Board of the City of Richmond, POWELL participated in the hiring of a civil engineer to measure the distance from a black doctor's house to the nearest white school and the nearest black school since the schools were so close in order to determine which school the doctor's children would attend.

2. POWELL was Chairman of the State Board of Education during the desegregation crisis of 1954 to the early or mid 1960s. During this period of time, the Old Dominion Bar Association believes that the State Board acted to impede school desegregation. For example, [REDACTED] in the notorious Prince Edward County school case, the school system was closed down entirely depriving for several years an education to all students.

Another court ordered the Prince Edward County schools reopened for the coming year. The State Board of Education acted to authorize the payment of so-called tuition grants to those students in the private schools for the previous school year. From the point of view of the Old Dominion Bar Association, this necessitated getting an injunction which was issued to stop these payments.

3. Mr. POWELL's law firm very prominently represents employers in what is called "Title 7" cases. [REDACTED] that "Title 7" of Civil Rights Act of 1964 bans discrimination in employment. He stated that these "Title 7" cases involve firms such as Phillip Morris and Virginia Electric and Power Company. [REDACTED] that the Old Dominion Bar Association finds it significant that when Title 7 cases (discrimination in employment) go before the court, it is invariably POWELL's firm which represents the defendant.

[REDACTED] stated that Mr. POWELL has admitted to membership in two clubs which not only exclude blacks but Jews as well. These clubs are the Country Club of Virginia and the Commonwealth Club in Richmond.

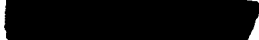
b6
b7c

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GHL:bld

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 the Old Dominion Bar Association believes that a man who aspires to the highest judicial post in the land should evidence more sensitivity than to be a part of something that excludes his fellow countrymen on the basis of skin, color or religious creed.

NF 77-3497

POB:jbd

1

The following investigation was conducted
by SA [REDACTED] on October 25, 1971:

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[REDACTED] Attorney, [REDACTED]
[REDACTED] Portsmouth, Virginia, advised he is [REDACTED]
[REDACTED] the Twin City Bar Association and is
also [REDACTED] the Old Dominion
Bar Association, which is an organization of black
attorneys throughout the State of Virginia. Mr.
[REDACTED] advised that he did not know the appointee
personally nor had he ever been associated with the
appointee on a professional basis. He stated that
he was not in a position to comment regarding the
qualifications of the appointee as he has no knowledge
of the appointee's experience and qualifications. Mr.
[REDACTED] stated that he was to meet with other members
of the Old Dominion Bar Association at a later date to
review the qualifications of the appointee and he expected
that a statement concerning the appointee would be released
through the Old Dominion Bar Association.

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b7C

Mr. [REDACTED] advised that he did not know of
anything which would reflect unfavorably upon the
professional background or the character, associates
and reputation of the appointee. He stated that his
knowledge of the appointee was entirely favorable and
that he felt that the appointee was a loyal American
citizen. Mr. [REDACTED] declined to make a recommendation
regarding the appointee since he was not known to him
personally and he had not had a chance to review the
appointee's background and qualifications.

NF 77-3497

WRK:mlb

1

The following investigation was conducted on
October 26, 1971 at Norfolk, Virginia by Special
Agent [REDACTED]

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b7c

[REDACTED]
Norfolk, advised that he is not familiar with LEWIS
FRANKLIN POWELL, JR. [REDACTED] stated that all he
knew concerning POWELL he had learned through various
public news sources.

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EDUCATORS

MF 77-3497

GHL:bld

1

The following investigation was conducted by
SA [REDACTED]:

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b7c

Dr. [REDACTED] College of William and Mary, Williamsburg, Virginia, advised on October 25, 1971, he was [REDACTED] College of William and Mary from [REDACTED]

He stated that he has known LEWIS FRANKLIN POWELL, JR., for about 14 years. Dr. [REDACTED] stated that he himself was the [REDACTED]

[REDACTED] College of William and Mary in [REDACTED]. He stated that he became acquainted with POWELL who was a member of the State Board of Education.

Dr. [REDACTED] stated POWELL has always been interested in the Richmond School System and has always been an advocate of quality education. He stated that on Charter Day at the College of William and Mary which was held on February 12-13, 1965, POWELL gave a speech entitled, "The Right to a Fair Trial." At the time he gave this speech, the College of William and Mary awarded POWELL the degree of Doctor of Laws. Dr. [REDACTED] stated that [REDACTED] has not been a member of the Board of Visitors for the College of William and Mary, and the degree was awarded to him so that he could be recognized on his own as an eminent figure in his own field.

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Dr. [REDACTED] stated that around 1967, he served with POWELL on an eleven-member commission to review the Virginia Constitution. He recalled that this was an integrated commission and that [REDACTED] a black Richmond attorney associated with the National Association for the Advancement of Colored People, was also a member of that commission. Dr. [REDACTED] stated that the rapport between the various commission members was excellent, and it was especially so between [REDACTED] and POWELL. Dr. [REDACTED]

Powell

NF 77-3497

GHL:bld

2

stated that POWELL has a most profound respect toward minorities always within the bounds of their rights and responsibilities as a minority.

Dr. [REDACTED] stated that POWELL never evidenced any prejudice whatsoever in any dealings he has had with him. POWELL is coldly logical and did a fine job on the commission articulating complex problems in terms laymen could understand.

POWELL is a cool non-emotional individual in facing issues. He can face complicated issues without bringing emotions into these issues.

Dr. [REDACTED] further stated that he has never detected any narrowness in POWELL in any of his dealings with him. He is a man of convictions and is firm and does not side with a majority merely for their support.

[REDACTED] stated that he has never at any time received any unfavorable information concerning the morals, character, reputation or loyalty to the United States of POWELL and likewise has never heard anything unfavorable concerning his domestic life.

NF 77-3497

GHL:bld

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The following investigation was conducted by
SA [REDACTED]

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b7C
[REDACTED] the College
of William and Mary, Williamsburg, Virginia, on October 26,
1971. [REDACTED] advised that he himself was [REDACTED]
[REDACTED]

[REDACTED] stated that he has personally known
LEWIS FRANKLIN POWELL, JR., since 1938 when he, [REDACTED]
was with the Richmond Bureau of the Associated Press,
and POWELL was a practicing attorney in Richmond, Virginia.

He stated that POWELL has been very active in numerous
civic enterprises in the city of Richmond. POWELL has served
on various boards and commissions including the City of
Richmond School Board, the State Board of Education being
Chairman of the State Board of Education in the late 1960s.
POWELL was also on the commission to revise the Virginia
State Constitution which was adopted in 1970.

[REDACTED] stated that POWELL was a moderate and
displayed no prejudice or violence toward any group while
on the City of Richmond School Board or the State Board
of Education. He was always mindful of the rights of
all individuals and was never a segregationist in the
sense that many people in the South are regarded as being
bastions of no change.

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b7C
[REDACTED] recalled that POWELL may have received a
Brotherhood for Interracial award around 1960 in
Richmond, Virginia; he could not recall for sure if
this was true.

[REDACTED] stated that POWELL more than any other
acquaintance has a quiet approach and the type of
temperament and ability needed by a judge. He has a
wide background of judicial experience and is extremely
well qualified.

NE 77-3497

GHL:bld

2

He stated that the personal character, integrity and loyalty to the United States of POWELL are unquestioned. He stated that he is acquainted with POWELL's wife and knows her to be a fine person. No unfavorable information has ever been received concerning POWELL's family life.

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b7C

██████████ stated that he certainly approves of the President's choice in choosing POWELL as a nominee for the Supreme Court, and he added that he does not believe that President NIXON could have picked a better man.

NF 77-3497

LWK:lld

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The following investigation was conducted by
SA [REDACTED] on October 26, 1971:

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b7c

[REDACTED] Johns Brothers, Inc., 986 Bellmore Avenue, Norfolk, Virginia, and [REDACTED] Norfolk School Board, advised that he met MR. LEWIS F. POWELL, JR., on one occasion but he did not know him personally to the point of being able to comment on his qualifications. Mr. [REDACTED] did say, however, that all of the comments he had heard from his friends and associates in the legal profession were excellent regarding Mr. POWELL's nomination for the Supreme Court vacancy. Mr. [REDACTED] said that he had had no contact with Mr. POWELL in connection with the School Board affairs of Norfolk or Richmond, Virginia. Mr. [REDACTED] said that he understood that Mr. POWELL had been chairman of the Richmond, Virginia, School Board at one time.

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BUSINESS CLIENTS

NF 77-3497
GHL:bld
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The following investigation was conducted by
Special Agent [REDACTED]

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b7c

[REDACTED] Colonial
Williamsburg, Incorporated, Williamsburg, Virginia, on
October 25, 1971, advised that he has known LEWIS FRANKLIN
POWELL, JR., for 20 years.

[REDACTED] stated that POWELL has done legal work
for Colonial Williamsburg, Incorporated, since 1953, and
has been the General Counselor for Colonial Williamsburg,
Incorporated, for the past 15 years. He is [REDACTED]
[REDACTED] Colonial Williamsburg Foundation,
Incorporated. [REDACTED]

[REDACTED] which is the holding company for Miller and
Rhoads and Brooks Brothers Stores.

[REDACTED] stated that POWELL is a very wise,
intelligent, fair-minded individual. He stated that
he is impeccable and that any nice adjectives that a
person could think of would apply to POWELL. He is a
person of utmost integrity. He is a rare combination,
being conservative insofar as business, law and order
and things of that type are concerned, and on the other
hand he is a moderate insofar as social problems are
concerned.

b6
b7c

[REDACTED] stated that POWELL in the mid-fifties
and early sixties was influential in getting rid of the
massive resistance tactics advocated to slow down the
integration of the Virginia public schools.

He stated that he believes POWELL will interpret
the United States Constitution strictly and fairly. He
is a fair-minded person who is not prejudice. [REDACTED]
stated that this country would be very fortunate to have
POWELL and eight others just like him serving on the
Supreme Court. He repeated that he cannot say enough

Prejudice

NF 77-3497

GHL:bld

2

good things about him and added he has never received any unfavorable information from any source concerning POWELL's personal or family life.

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b7c [REDACTED] stated that POWELL has a sister, Mrs. [REDACTED], who resides in Williamsburg, Virginia, with her husband, a retired attorney. Mr. and Mrs. [REDACTED] are likewise fine people [REDACTED] stated.

NY 77-3497

MLC:bl4

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The following investigation was conducted by
SA [REDACTED] on October 26, 1971:

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b7c

Mr. [REDACTED] Richmond, Virginia, and [REDACTED] Norfolk, Virginia, advised that he is a lawyer by profession and has known the nominee since about 1927 when they were in school together at Washington and Lee University, Lexington, Virginia. He advised that the nominee's law firm in Richmond took the account of the [REDACTED] in about 1961 and in this capacity he has come to know the nominee very well. He considered the nominee to be a well qualified lawyer and a very eminent, dedicated American whose loyalty, character or associates he would not question. He advised that the nominee was a student of law and if appointed to the United States Supreme Court would be an outstanding Justice. He felt that the nominee if appointed would be fair to all races, creeds and religions. He stated that any decisions made by the nominee would come from the nominee's part and mind in strict conformance with the law. He felt that this was an appointment in merit and not a political appointment.

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b7c

Mr. [REDACTED] advised that in his dealings with the bank, the nominee has always been above reproach and always "falls over backwards" for the bank. He pointed out that on occasion, he has been in the nominee's company socially, but most of his associations with the nominee have been on a business basis. He highly recommended the nominee's appointment as a United States Supreme Court Justice.

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b7c

NF 77-3497

INVESTIGATION AT LOCAL NEWSPAPERS

NF 77-3497

JBM:mlb

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The following investigation was conducted by
Special Agent [REDACTED]

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On October 28, 1971 [REDACTED]
[REDACTED] the Suffolk News-Herald, a
newspaper of general circulation in Suffolk, Virginia,
advised that the files of his newspaper contained no
derogatory information concerning LEWIS F. POWELL, JR.
Mr. [REDACTED] further advised he is not personally
acquainted with POWELL nor is he sufficiently
acquainted with POWELL's background to comment on
him.

b6
b7c

On October 25, 1971 the files of the library of the
Ledger-Star newspaper and Virginian-Pilot newspaper,
newspapers of general circulation in the Norfolk,
Virginia area, were reviewed, and no information of a
derogatory nature concerning LEWIS FRANKLIN POWELL, JR.
was discovered.

NF 77-3497

HAW:mlb

1

The following investigation was conducted by
Special Agent [REDACTED] on October 26, 1971 at
Norfolk, Virginia:

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Mr. [REDACTED]
the "Journal and Guide" newspaper published weekly in
Norfolk, with a predominantly Negro circulation, advised
on October 26, 1971 that he had learned through the
wire services of Mr. POWELL's nomination to the Supreme
Court. He stated, however, that he has never met
Mr. POWELL and knows nothing further concerning him,
other than that he was born in Suffolk, Virginia, and
has been a practicing attorney in Richmond, Virginia.

NF 77-3497

GHL:bid

1

The following investigation was conducted by
SA [REDACTED]

At Newport News, Virginia

Mr. [REDACTED] the Daily Press, a newspaper published daily at Newport News, Virginia, advised on October 25, 1971, that the morgue of that newspaper reflected that no information concerning LEWIS FRANKLIN POWELL, JR., other than an article which appeared in the October 23, 1971, issue of the Daily Press on page three, entitled "Court Nominees Both Have Williamsburg Ties."

b6
b7C

[REDACTED] noted that this article was written by SUSIE DORSEY, Daily Press Staff Reporter, and mentioned that POWELL had been honored by the College of William and Mary in 1965 with the presentation of a Doctor of Laws degree. The article also mentioned excerpts from a speech which POWELL had given in connection with the occasion which speech was entitled, "The Right to a Fair Trial."

b6
b7C

At Williamsburg, Virginia

[REDACTED] Daily Press Staff Reporter, Williamsburg Bureau, on October 26, 1971, advised that the morgue of that Bureau reflects no information concerning LEWIS FRANKLIN POWELL, JR., with the exception of a brochure concerning the 1965 Charter Day conference held on February 12-13, 1965, at the College of William and Mary, Williamsburg, Virginia. This program contained the speech given by POWELL on that occasion and was entitled, "The Right to a Fair Trial."

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The program likewise contained remarks given by Dr. [REDACTED] the College of William and Mary, when he presented POWELL with an honorary degree of Doctor of Laws.

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Miss [REDACTED] furnished the above-mentioned 1965 Charter Day conference program from which has been excerpted the speech given by LEWIS FRANKLIN POWELL, JR., as well as the remarks given by Dr. [REDACTED] at the time an honorary Doctor of Laws degree was presented to POWELL.

b6
b7c

A copy of this speech is included in the appendix of this report.

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ARREST CHECKS

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GHL:bld

1

The following investigation was conducted by
SA [REDACTED]

At Williamsburg, Virginia

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Mrs. [REDACTED] Radio Dispatcher,
Williamsburg, Virginia, Police Department, on October 25,
1971, advised she could locate no arrest record for
Mr. and Mrs. [REDACTED]
[REDACTED] Williamsburg, Virginia.

NF 77-3497

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1970

No. 281

OFFICE OF U.S. DIST. JUDGE
NORFOLK, VA.

JAMES E. SWANN, ET AL.,

Petitioners,

v.

CHARLOTTE-MECKLENBURG BOARD OF
EDUCATION, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE COMMONWEALTH OF VIRGINIA,
AMICUS CURIAE

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Dated September 16, 1970.

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I.

INTRODUCTION

The Commonwealth of Virginia, because of the immediate effect that the decision in this case will have on many thousands of its citizens, requests the Court to consider its views outlined in this brief. It seeks modification of the opinions of both of the courts below and an expression of principles that will guide all courts throughout the nation in this most difficult area of basic human relationships.

II.

THE INTEREST OF VIRGINIA

In Virginia, segregation by race in the public schools was required by constitution and statute prior to 1954. In fact, one of the cases decided here under the style of *Brown v. Board of Education*¹ came to this Court from a Virginia locality.²

It would be erroneous to assert that Virginia localities welcomed *Brown I* and began at once to put into effect the remedial steps required by *Brown II*³; in most places they did not. There was, instead, intense public opposition and much delay. As a result, litigation arose in many communities.⁴ The march toward what more recently has been termed

¹ 347 U.S. 483 (1954).

² *Davis v. County School Bd.*, 103 F. Supp. 337 (E.D.Va. 1952), reversed by the *Brown* decisions.

³ 349 U.S. 294 (1955).

⁴ See, e.g., *Thompson v. County School Bd.*, 144 F. Supp. 239 (1956), *aff'd sub. nom. School Bd. v. Allen*, 240 F.2d 59 (1956), *cert. denied*, 353 U.S. 910, 911 (1957), *opinion supplemented*, 159 F. Supp. 567 (1957), *aff'd* 252 F.2d 929 (1958), *cert. denied*, 356 U.S. 958 (1958), *injunction dissolved*, 204 F. Supp. 620 (1962); *Daniels v. School Bd.*, 145 F. Supp. 261 (1956); *Atkins v. School Bd.*, 148 F. Supp. 430 (1957), *aff'd* 246 F.2d 325 (1957), *cert. denied*, 355 U.S. 855 (1957); *James v. Almond*, 170 F. Supp. 331 (1959), *appeal dismissed*, 359 U.S. 1006 (1959).

a "unitary" system of public schools proceeded inexorably in Virginia but, for a decade, it was an unwilling march prodded by the courts of the United States.

It is now fair to say that Virginia localities⁵ are attempting in good faith to comply with the mandate of the Equal Protection Clause. But the courts have failed to make it clear exactly what compliance entails. The dual system must be replaced by a unitary school system,⁶ but how this is to be accomplished is still far from apparent.

The result has been a chaotic condition in several of Virginia's school systems. Two of its largest school divisions, as the local systems are called, are located in Richmond and Norfolk, Virginia's two largest cities. Litigation affecting both of these cities has produced orders in August of this year substantially rearranging school attendance areas and inevitably requiring extensive pupil busing.⁷ This has resulted in major disruption of public education and confusion among white and black parents, students, faculty and staff; it often has led to resentment and even fear.

The educational process is difficult enough without such disruption. The time has come to think first of education and the whole body of children to be educated. That, in our view, can be accomplished only by the establishment by this Court of the parameters within which school officials are to act and by which their action is to be judged by the courts.

The factual situation existing in Charlotte, North Carolina, presents certain striking similarities to the situations presented by Norfolk and Richmond. All three cities are

⁵ In Virginia local school boards, pursuant to the State constitution, have the primary responsibility to operate the public schools.

⁶ *Green v. County School Bd.*, 391 U.S. 430, 438 (1968); *Alexander v. Holmes County Bd. of Educ.*, 396 U.S. 19, 21 (1968).

⁷ *Bradley v. School Bd.*, Civil Action No. 3353 (E.D. Va., Aug. 17, 1970) (Richmond); *Beckett v. School Bd.*, Civil Action No. 2214 (E.D. Va., Aug. 27, 1970) (Norfolk).

localities where, prior to 1954, segregation by race was required by law. In all three, the percentage of black students in the school population is significant, the 70% white and 30% black ratio of Charlotte becoming 60% white and 40% black in Norfolk, and reversing to less than 40% white and more than 60% black in Richmond.

Plans proposed by HEW and others presented by the Norfolk and Richmond School Boards were rejected because, the courts said, racial imbalance was not eliminated in sufficient degree.⁸ That result obtains equally in this case from Charlotte. In each of these cases the court's solution was to require greater racial balance and, inevitably, massive compulsory busing of students.

The question in those cases, as here, was whether racial balance is an end in itself; if substantial racial balance must be achieved, regardless of other educational factors that are of significance in the situation presented, then the District Courts were right in Charlotte and Richmond and the Court of Appeals was right in Norfolk. If, as we urge, other factors are also relevant, those courts were in error.

What will be decided here is, therefore, entirely relevant in the two most critical Virginia situations. For that reason, the decision here may be determinative in Virginia. Therein lies Virginia's interest.

There are, of course, substantial points of difference between Charlotte and the Virginia cities. The difference in the racial mix has already been mentioned. This results primarily from the fact that, by and large, the Norfolk and Richmond school divisions are entirely urban rather than both rural and urban as is the case in Charlotte. Norfolk is

⁸ *Bradley v. School*, Civil Action No. 3353 (E.D. Va., Aug. 17, 1970) (memorandum opinion); *Brewer v. School Bd.*, No. 14,544 (4th Cir., June 22, 1970), *cert. denied*, 38 U.S.L.W. 3522 (U.S. June 29, 1970) (No. 1753).

adjoined by two cities, Chesapeake and Virginia Beach; in them the percentage of black students is relatively small. Richmond is bounded by two counties, Chesterfield and Henrico; again their black student percentages are drastically lower than is that of Richmond. As urban systems, the two Virginia cities do not normally provide transportation for pupils. The transportation problem presented by the racial balance requirement is therefore more acute because of the lack of facilities.

A brief word may be relevant as to the Norfolk and Richmond plans that were rejected by the United States courts. In both cities, the rejected plans provide for the effective integration of all senior high schools and all junior high schools or middle schools. In both plans, the respective school boards go far beyond neutral or objective zoning plans, gerrymandering natural attendance zones in a manner designed to increase the degree of integration in the systems and to overcome the segregative effects of racial residential patterns. Both plans include a majority-to-minority transfer provision. The Richmond plan calls for "learning centers" where weekly or bi-weekly interracial educational experiences are to be provided for each child in the system who attends a school with a population 90% or more of the same race. Principles of the Norfolk plan were explicitly based on the best available social science data, including the highly regarded research projects sponsored by the U.S. Office of Education⁹ and the U.S. Commission on Civil Rights.¹⁰

In sum, both plans adopt a neighborhood or community concept in the sense that attendance areas for elementary

⁹ *Equality of Educational Opportunity*, Office of Education, U.S. Dept. of Health, Education and Welfare (1966).

¹⁰ *Racial Isolation in the Public Schools*, U.S. Comm'n on Civil Rights (1967).

schools are served by one or several schools and the advantages of convenience and close school-family relationships are retained where practical. Overlaying this concept, however, is the use in each plan of all feasible alternatives to maximize integration. A number of subsidiary concepts, such as pairing, consolidation and closing of schools, are incorporated in the plans. No alternative plan was offered at any hearing which would have the effect of increasing the amount of desegregation that would result from the school board plans, short of a plan which would require compulsory massive busing to attain racial balance throughout each system.

The question before the Virginia federal courts was, accordingly, much the same as that presented in Charlotte: is racial balance a constitutional requirement? The difficulties of busing in an urban system were presented to the courts in both Virginia cases. The expense of initiation of school transportation systems, a factor not present in Charlotte, and the inadequacy of existing public transportation systems were explored. The plaintiffs nevertheless sought approval of plans requiring cross-busing, even of the youngest children. Those plans, in essence, received ultimate judicial confirmation.

Virginia opposes racial balance as a constitutional requirement. It believes that such balance must be considered; but it should not be the controlling consideration. It seems to us that racial balance alone was the determining factor in Charlotte, Norfolk and Richmond. We suggest to the Court that racial balance is not a desideratum in itself and that this Court should declare the constitutional mandate to be the best available quality of education for *all* regardless of race or color.

III.

THE ISSUE BEFORE THE COURT

The central issue before the Court is whether racial balance is an end in itself, required by the Constitution without regard to other educational considerations or other values.

IV.

SUMMARY OF ARGUMENT

A.

The Origin Of Racial Segregation Is Irrelevant

The proposition that one set of rules applies where the origin of racial segregation was *de jure* and another where the origin was *de facto* is without substance. History is irrelevant to the enforcement of a constitutional right. Racial segregation has almost everywhere received State support. Thus no racial segregation is purely *de facto*. Because the State maintains public schools, a segregated system constitutes State action. Its existence, without regard to its origin, thus raises a substantial constitutional question. The same rules must apply to non-unitary systems wherever found.

B.

Racial Balance Is Not Required

Racial balance in the schools is not a constitutional imperative. No decision of this Court has established such a mandate. It is effective neither to accomplish integration nor to improve education. Racial balance once prescribed may be outdated by population shifts before it becomes effective. The effort to attain racial balance promotes resegregation.

gation and movement to suburbia. These results defeat the goal of racial balancing, adversely affect education and contribute to urban deterioration.

C.

The Highest Quality Of Education Must Be The Goal

The goal of the desegregation movement must be to achieve the highest quality of education. That has been the thrust of previous decisions of this Court. Equal opportunity is not to be measured purely by equality of resource application and racial balance; that system best conforms to the constitutional mandate that provides, through equal opportunity for every student, the highest level of achievement for all students of every race, compensating appropriately for any deficiencies that may have resulted from previous racial segregation. The court below failed to recognize that the best educational achievement for all is what the Constitution demands.

D.

The Court Below Misapplied Its Rule Of Reason

The court below unduly emphasized racial balance. It also failed to recognize the relevance of the neighborhood school and the disadvantages for all races of extensive compulsory busing. The neighborhood school has obvious social and educational advantages, particularly at the elementary level. It can be used with a number of related techniques reasonably applied, without destroying neighborhood advantages. Modern social scientists have developed many considerations that ought to be taken into account in devising the plan that, giving weight to all relevant disparities, best promotes the educational achievement of students of all races.

V.

ARGUMENT

A.

The Origin Of Racial Segregation Is Irrelevant

In its consideration of the question presented here, the Court of Appeals, in the plurality opinion, went to some lengths to determine that the segregated pattern of housing in Charlotte results from governmental action. We consider this investigation irrelevant. We consider it more than irrelevant; it may be pernicious. It could lead to one set of rules applying in one area of our nation and another set applying in another. The constitutional right at issue here should be available to all citizens without regard to the fortuitous circumstance of the racial history of the places in which they live.

An Unsound Distinction

Such an investigation presupposes that one set of rules applies where the origin of racial segregation was *de jure* and another set where the origin was *de facto*. As an example of this distinction, reference is made to *Deal v. Cincinnati Board of Education*, 369 F.2d 55 (6th Cir. 1966), *cert. denied*, 389 U.S. 847 (1967). There, the Sixth Circuit held that the school board has no duty to bus students "... for the sole purpose of alleviating racial imbalance that it did not cause..." (369 F.2d at 61).¹¹

First, the question is not whether the State action is limited to schools; it is a matter of State action in all phases of race relationships such as public housing and zoning. In this context, it is probable that all racial segregation in the

¹¹ See also *Bell v. School City*, 324 F.2d 209 (7th Cir. 1963), *cert. denied*, 377 U.S. 924 (1964).

United States, wherever occurring, has at some time been maintained or supported by governmental action.¹² Thus there is no such thing as *de facto* segregation that is not of *de jure* origin in some degree. The distinction purportedly made in *Deal* cannot, then, be factually supported.¹³

State Action is Inevitable

But the vice lies deeper. Public schools are creatures of the State, and a State may not continue to operate through its local school boards or otherwise a system which denies a constitutional right. Thus, a school system which denies equal educational opportunity infringes protected rights. Whether such a system was State created or State assisted or merely State perpetuated is beside the point. If it deprives children of equal educational opportunity, the Equal Protection Clause is infringed.

Uniformity of Constitutional Rights

This conclusion is not only sound doctrine but desirable public policy. If non-unitary school systems must be eliminated because they perpetuate racial segregation, they must be extirpated everywhere and not just in the former Confederate states. A constitutional right ought not to be en-

¹² In Appendix C to his opinion, Judge Hoffman compiled a summary of governmental action in the various states. *Beckett v. School Bd.*, 308 F. Supp. 1274, 1304, 1311-15. See also *Racial Isolation in The Public Schools*, U.S. Comm'n on Civil Rights 245, 254-59 (1967); M. Weinberg, *Race and Place*, Office of Education, U.S. Dept. of Health, Education and Welfare (1967).

¹³ See Freund, *Civil Rights and the Limits of Law*, 14 Buffalo L. Rev. 199, 205 (1964). On July 7, 1970, Ramsey Clark, former Attorney General of the United States, testifying before the Senate Select Committee on Equal Educational Opportunity, said:

"In fact, there is no *de facto* segregation. All segregation reflects some past actions of our governments."

forced in Virginia and denied enforcement in Ohio or Indiana because of the vagaries of history.

Professor Bickel has commented on this double standard. As he points out: "Outside the South . . . school segregation is massive, and has, indeed, increased substantially in recent years . . . caused mainly by residential patterns. Nevertheless, very few federal courts have tried to intervene [and] none has done so without qualification."¹⁴

In commenting on the incongruity of different rules issuing "out of the same federal judiciary" Professor Bickel spoke of "one binding rule of constitutional law for Manhasset, New York" and "a different rule of constitutional law for New York City."¹⁵

Such a situation, without precedent in constitutional doctrine, cannot be tolerated. Citizens are entitled to enforcement of constitutional rights evenly and consistently throughout the United States. The Constitution requires no less.¹⁶

B.

Racial Balance Is Not Required

Opponents of the school board plans insist upon substantial racial balancing in *each* school in a system. If, as in

¹⁴ A. Bickel, *The Supreme Court and the Idea of Progress* 131 (1970). See also *Racial Isolation in the Public Schools*, *supra*, at 2-10.

¹⁵ *Id.* at p. 133. The Manhasset decision is found in *Blocker v. Board of Educ.*, 229 F. Supp. 709 (E.D.N.Y. 1964).

¹⁶ This is, among other things, the purpose of S. 4167, 91st Cong., 2d Sess. (1970), introduced by Senator William B. Spong of Virginia (and a similar bill introduced in the House of Representatives). Hearings on these bills have been held before appropriate committees in both houses. See also Sobeloff and Winter, JJ., concurring specially in *Brewer v. School Bd.*, No. 14,544 (4th Cir., June 22, 1970) (Norfolk).

Richmond, the overall student population ratio is 60% black and 40% white, these opponents contend that each school in the system must have substantially this ratio both of pupils and teachers.¹⁷

It is submitted that the racial balance concept is neither required by the Constitution nor is in the public interest. Indeed, if established as the "law of the land," its consequences could be disastrous to public education.

The Decisions of This Court

What *Brown I* required, to assure equal educational opportunity, was the elimination of racial segregation in the schools. Subsequent cases have added the affirmative mandate that dual school systems must be eliminated and unitary systems established.¹⁸ These are the terms with which local school boards and lower courts have struggled. Some have construed them to require racial balancing; others, more perceptive we think, have recognized that this Court has never projected a mechanistic solution for a problem of such delicacy and diversity. *Brown I* states:

"... because of the wide applicability of this decision, and because of the great variety of local conditions, the formulating of decrees in these cases presents problems of considerable complexity." 347 U.S. at 495.

When the Court came to the problem of formulating decrees, it provided substantial latitude:

¹⁷ *Beckett v. School Bd.*, 308 F. Supp. 1274, 1276 (E.D.Va. 1969), stating the position of the plaintiffs. See Winter and Sobeloff, JJ., concurring in part and dissenting in part, in the court below in this case.

¹⁸ *Green v. County School Bd.*, 391 U.S. 430 (1968); *Alexander v. Holmes County Bd. of Educ.*, 396 U.S. 19 (1969); *Carter v. West Feliciana School Bd.*, 396 U.S. 290 (1970).

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power." 349 U.S. at 300.

Further along in that opinion, Mr. Chief Justice Warren recognized that there were a number of areas of consideration. He said:

"To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems." 349 U.S. at 300-01.

The approach remains unchanged. In *Green v. County School Board*, 391 U.S. 430 (1968), Mr. Justice Brennan said, speaking for the Court:

"There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in the light of the circumstances present and the options available in each instance." 391 U.S. at 439.

See also *United States v. Montgomery Board of Education*, 395 U.S. 225, 235 (1969). And Mr. Chief Justice Burger has made clear his view that there are a number of areas other than (but including) transportation that must be given consideration. He said, concurring in the result in *Northcross v. Board of Education*, 397 U.S. 232 (1970):

“... we ought to resolve some of the basic practical problems when they are appropriately presented including whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent school districts and zones may or must be altered as a constitutional matter; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court.” 397 U.S. at 237.

This Court could hardly have more clearly stated its refusal to enunciate a mechanistic rule of racial balance in every case.

Racial Balance is Illusory

The issue before this Court is whether such a rule should now be established. Those who support it argue that it has the virtue of exactitude; that it would be easy for courts to adopt and administer; and that it would put an end to the inevitable litigation resulting from the application of a less definitive rule.

We suggest that these views misconceive both the constitutional requirements and the realities of public education.

The racial mix varies widely among the cities and counties of this country. The range is from school districts which are perhaps 90% black (Washington, D. C. and Clarendon County, South Carolina¹⁰) to many districts which are nearly all white. The demography also constantly varies, especially within cities. The population ratio changes as citizens move to suburban areas, and white and black families

¹⁰ See *Brunson v. Board of Trustees*, No. 14,571 (4th Cir., June 5, 1970).

are constantly moving within cities. Racial balance established one year would rarely be valid two or three years later.

The City of Richmond is not atypical. In 1960 the school population ratio was 55% black and 45% white. Prior to the annexation of a portion of Chesterfield County on January 1, 1970, population shifts—some perhaps related to integration, but most to the normal desire to live in suburbia—had increased the ratio of black to 70%. Annexation temporarily reversed this trend, so that the black majority was reduced to about 60%. At the opening of the present school session, it has grown to 64%. No one believes it will remain there for as much as a year.

As shown in the Richmond case, population shifts *within* the city have been equally dramatic. Many previously white areas are now all black. But despite this shifting there are in Richmond—as in scores of cities in the North and South—large areas populated entirely by blacks, with the fringes populated by the poorer whites.²⁰

To impose, as urged by plaintiffs, an arbitrary percentage mixing in every school in Richmond would be as unrealistic as to impose such a scheme upon New York, Chicago, Philadelphia or Pittsburgh. Yet, if racial balance is a constitutional imperative, it is applicable to all communities at all times.

Racial Balance is Regressive

One wonders why compulsory racial balancing is advocated. It would be difficult to conceive of a more certain way to assure a return, in countless communities, to essentially separate schools—if not for whites and blacks, certainly for those in the lower income levels of both races.

²⁰ *Racial Isolation in the Public Schools, supra*, at 19-20, 31.

The shorthand term, often used critically, is "white flight." Concurring opinions below criticize this exercise of freedom.²¹

But the connotation of "white flight" misconceives the fundamentals. It is obviously true that since *Brown* the white exodus to suburbia has accelerated. It must be remembered, however, that the population movement from congested urban areas into suburban environments has long been characteristic of the American scene.²² It antedated *Brown*; it exists throughout our country, and indeed abroad; in its genesis, it bore no relation whatever to school integration. Indeed, the desire to move upward economically and socially—so basic to the American ideal—reflects itself nowhere as strongly as in the urge for a better residential environment. Often access to a particular neighborhood school is a dominant factor in selecting a new home site.

These ambitions cannot be suppressed by court decrees. The movement from congested urban areas will continue regardless of how this case is decided. But few would doubt that it will accelerate geometrically if the concept of racial balance is enforced by law.²³ Examples of the inevitable

²¹ See Sobeloff and Winter, JJ., concurring in part and dissenting in part in this case and in *Brunson v. Board of Trustees, supra*, at n. 19. White flight is, of course, an erroneous term because middle income citizens of both races are seeking suburbia.

²² *United States Census of Population: 1960, Standard Metropolitan Statistical Areas*, Bureau of the Census, U.S. Dept. of Commerce 1-257 (1963).

²³ The trend toward private schools, especially in the South, will also be accelerated. There are some who say that the "remedy" for this is the outlawing of private schools or withdrawing of their tax advantages. But this drastic solution would scarcely be acceptable to the public generally. In addition, it would require the overruling of *Pierce v. Society of Sisters*, 268 U.S. 511 (1925).

resegregation²⁴ process are numerous, but Washington, D. C. suffices.

It is thus evident that enforced racial balance is both regressive and unproductive. It frustrates the aspirations of *Brown*, namely, the promotion of equal education opportunity; it assures in time the resegregation of most of the blacks in many urban communities. This will result in deteriorating educational opportunities both for the poorer blacks and whites who cannot afford to move.

In short, the end result is precisely the opposite of that desired; it widens the disparities between the lower and the middle-income families of both races.

The adverse economic and social consequences of resegregation, however caused, also are disquieting. Property values deteriorate; sources of local taxation shrink; all municipal services—as well as education—suffer; and—worst of all—the quality of civic leadership erodes.²⁵

The foregoing results, now known from experience to be predictable, are scarcely in the public interest. They suggest the need for careful rethinking of proposals such as enforced racial balance which accelerate the process of urban deterioration.²⁶

²⁴ "[A]t the critical point—whatever it is—a formerly stable state of integration tends to deteriorate, being reflected by the exodus of white pupils. At the same time that this process is going on in the schools, the exodus of white residents is also apparent in the turnover of housing to the Negroes at only a slightly slower pace." *Civil Rights U.S.A.: Public Schools North and West*, U.S. Comm'n on Civil Rights 185-86 (1962).

²⁵ Kerner et al., *Report of the National Advisory Commission on Civil Disorders* 220 (1968).

²⁶ Indeed, the integration of schools is only one aspect of the complex of problems associated with urban life. The courts are ill-equipped to deal with these problems, which lie primarily within the province of the legislative and executive branches. The time may have come, with respect to the schools, for greater reliance upon the Congress as contemplated by Section 5 of the Fourteenth Amendment.

Restructuring of Governmental Relationships

The results of enforced racial balance could be sufficiently serious to prompt demands for restructuring of federal and state relationships. The facile answer to population withdrawal from urban areas is to enlarge the boundaries of school districts.²⁷ But this cannot be done, either by judicial decree or federal legislation, without uprooting state constitutional and statutory provisions with respect to the autonomy and authority of local school boards and governmental subdivisions. And new and enlarged boundaries, wherever drawn, would not long contain a mobile and unwilling population.

C.

The Highest Quality Of Education Must Be The Goal

If not racial balance, what is the alternative that is compatible with the Constitution and the goal of quality education for all? We think there can be no single, inflexible rule. We start from principles settled by this Court: Racial discrimination is a denial of equal educational opportunity; dual or segregated school systems are proscribed; and school authorities have an affirmative duty to establish unitary systems. These principles must be observed and applied, not as ends in themselves but as means of achieving the educational goal. The alternative then, to simplistic racial mixing pursuant to formula, is to recognize that reasonable discretion must be allowed in the assignment of pupils and the administration of a school system so long as the foregoing principles are not contravened and the measures taken comport with the educational goal.

²⁷ See *Hobson v. Hanson*, 269 F. Supp. 401, 515-16 (D.D.C. 1967), *aff'd sub nom., Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969).

That education of the best quality is the goal was clearly recognized in *Brown I*:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. . . ." 347 U.S. at 493.

It seems clear that desegregation by race is only one step along the road toward equal educational opportunity—an equal chance to obtain the best education that the particular system can provide. The goal is the best education for all; racial segregation is an impediment to be removed in striving to achieve that goal.

The best education, however, is not achieved *solely* through racial integration. In a recent article, Dr. David K. Cohen states that "three major criteria of equality seem to compete as policy alternatives: equal resource allocation, desegregation, and equality of educational outcome. . . ." Cohen, *Defining Racial Equality in Education*, 16 U.C.L.A. L. Rev. 255 (1969). But, as Dr. James Coleman, author of the famous Coleman Report,²⁸ has concluded, equal resource allocation plus desegregation does not necessarily result in improved educational output. He said that "[t]he result of

²⁸ *Equality of Educational Opportunity*, Office of Education, U.S. Dept. of Health, Education and Welfare (1966).

the first two approaches (tangible input to the school, and [de]segregation) can certainly be translated into policy, but there is no good evidence that these policies will improve education's effects. . . ." Coleman, *The Concept of Equality of Educational Opportunity*, 38 Harv. Educ. Rev. 7, 17 (1968). And the goal is, after all, the improvement of the effect of education.

This conclusion has received the concurrence of Dr. Cohen. He states:

"The problem, however, is that although desegregation and equal resources are educationally salient, both seem a good deal less strategic than achievement. Judgments about the quality of students' education in America are certainly not made on a purely meritocratic basis, but students' achievement still weighs more heavily in the balance than either the degree of racial integration, or the quality of resources in their schools. The same thing is true of the standards presently employed in assessing schools' effectiveness. Equal achievement seems the most relevant standard of racial equality." Cohen, *Defining Racial Equality in Education*, 16 U.C.L.A. L. Rev. 255, 278 (1969).

Dr. Cohen concludes that the implicit assumption of *Brown I* that desegregation and proper resource allocation would result in equal achievement was an erroneous one:

"Experience and knowledge gained since then have shown that the two standards cannot be met by the same measures." *Id.* at 280.

What, therefore, is the criterion? In Dr. Cohen's words, it is equal achievement; in Dr. Coleman's, it is educational output. What, in simpler terms, the school boards must seek and the courts must approve is the means to promote equal educational opportunity, regardless of race, in a system structured for the highest achievement.

It seems strange that this goal is not mentioned by the court below. It places no emphasis whatsoever on the quality of education. It seems mesmerized by race; it hardly seems to recognize that we are presented with an educational problem of which race is merely a facet.²⁹

D.

The Court Below Misapplied Its Rule Of Reason

The Court of Appeals in the Charlotte case adopted a "test of reasonableness," saying:

1. "not every school in a unitary school system need be integrated."
2. "school boards must use all reasonable means to integrate the schools in their jurisdiction."
3. Where all schools cannot reasonably be integrated, "school boards must take further steps to assure that pupils are not excluded from integrated schools on the basis of race."

These views, we think, are compatible with the opinions of this Court. They do not accept the mechanistic rule of racial balance.

But we believe the Court of Appeals misconceived the application of its own test. The focus, as is evident from the rejection of the school board plans in Charlotte, Norfolk and Richmond, was upon desegregation with little or no visible concern for the object of desegregation, namely, improved educational opportunity for all students. We think that the Court below departed from an appropriate test of reasonableness particularly with respect to (i) its emphasis on

²⁹ The District Judge in the Norfolk case commented correctly that the word "education" does not even appear in the opinion of the Court of Appeals reversing his general approval of the Norfolk School Board's plan. *Beckett v. School Bd.*, Civil Action No. 2214 (E.D.Va., Aug. 14, 1970).

extensive compulsory busing and (ii) its misappreciation of the educational relevance of neighborhood or community schools.

Compulsory Busing

There is nothing inherently wrong with transporting school children where this is necessary. In every rural school district busing is a necessity. In such districts in the South it was used for decades to implement segregation. In the Charlotte case, involving a large urban-rural school district, there was substantial necessary busing before the District Court undertook in effect to impose racial balance by extensive cross busing.

Even in an urban district some busing may be appropriate, contributing both to integration and sound education. The problem, one so familiar in law, is one of degree and reasonableness. A notable example of unreasonable busing in pursuit of racial balance is that ordered in *Crawford v. Board of Education*.³⁰ In that case the Los Angeles school board was ordered to establish a rigorously uniform racial balance throughout its 711-square-mile district, with its 775,000 children in 561 schools. This order, if upheld on appeal, would require the busing of 240,000 students at a cost of \$40 million for the first year and \$20 million for each year thereafter with the result that the deficit of \$34-54 million already confronting the school board would be increased by these amounts.³¹

³⁰ No. 822, 854 (Cal. Super. Ct., Feb. 11, 1970).

³¹ N.Y. Times, Feb. 12, 1970, at 1, col. 5 (city ed.). President Nixon, in his statement of March 24, 1970, aptly states that rulings of this character ". . . would divert such huge sums of money to non-educational purposes, and would create such severe disruption of public school systems, as to impair the primary function of providing a good education." *Desegregation of America's Elementary and Secondary Schools*, Weekly Compilation of Presidential Documents (March 30, 1970).

The preoccupation with "racial mixing of bodies"³² has often caused the overlooking of the social and educational disadvantages of busing, especially at the elementary level.³³ It removes a child from a familiar environment and places him in a strange one; it separates the child from parental supervision for longer periods of time; it undermines the neighborhood or community school, so desirable at the elementary level; and it adds to already strained budgetary demands.

These are the considerations which have prompted the Congress, reflecting overwhelming public sentiment, three times to record its opposition to enforced busing merely to achieve racial balance.³⁴

The Neighborhood School

We think that the Court below also largely ignored the educational advantages of the neighborhood school at the elementary level. The geographic neighborhood is the most common unit of organization of urban elementary public schools.³⁵ The neighborhood unit provides for ease of access to schools for students, minimizing costs and time of

³² In his memorandum decision of August 14, 1970, attempting to implement the mandate of the Circuit Court, Judge Hoffman commented "that the benefits of sound education have now been clearly subordinated to the requirement that racial bodies be mixed." See also *Beckett v. School Bd.*, 308 F. Supp. at 1302.

³³ A disturbing aspect of seeking racial balance at any cost is that children too often are treated as pawns to produce sociological changes that are related more to other factors, such as housing, than to education.

³⁴ Civil Rights Act of 1964, 42 U.S.C. § 2000c(b) (1964); Elementary and Secondary Education Act of 1965, 20 U.S.C. § 884 (1966), amending 20 U.S.C. § 884 (1965); Education Appropriations Act of 1971, P.L. 91-380, 91st Cong., 2d Sess., §§ 209, 210 (1970).

³⁵ New York City's current experiment in decentralization is further evidence of the vitality of the neighborhood or community concept. N.Y. Times, Sept. 13, 1970, at 1, col. 2.

travel to and from school, and thus maximizing the potential extracurricular role schools can play in the lives both of parents and children. These factors, along with the associational benefits of attending school with friends which, particularly for elementary school children, ease the psychological stress of initial adjustment to school, have led such a noted educator as James B. Conant, former President of Harvard University, to the conclusion that "[a]t the elementary school level the issue seems clear. To send young children day after day to distant schools seems out of the question."³⁶

The quality of a community's education depends ultimately upon the level of public support.³⁷ A willingness to pay increased taxes and to vote for bond issues can evaporate quickly in the face of enforced busing and dismantling of neighborhood schools where such actions do not contribute to improved education for all.

Educational effectiveness also is dependent on the attitude of parents toward their children's education, and rationally configured systems of neighborhood schools play a vital role. Parental support of their children's schooling normally reinforces the efforts of their children's teachers in substantial measure;³⁸ to the degree that schools can involve parents with their children's education as such,³⁹ or broaden the parents' own educational horizons,⁴⁰ this end is served. Community schools, when designed in such a way as to avoid the feelings of disaffection which attend systematic

³⁶ J. Conant, *Slums and Suburbs* 29 (1961).

³⁷ A current dramatic example of the financial crisis in public education across the country is found in St. Louis, Missouri, where taxpayers in four suburban school districts north of the city have shut 46,000 pupils out of classes by consistently defeating school tax levies. *N.Y. Times*, Sept. 14, 1970, at 1, col. 3.

³⁸ M. Weinberg, *Desegregation Research: An Analysis* 140-41 (1968).

³⁹ *Christian Science Monitor*, Aug. 14, 1970, at 11, col. 1.

⁴⁰ C. Hansen, *Danger in Washington* 81 (1968).

ghettoization, whatever its origin, foster such an active parental role because of their very accessibility.

Further, the accessibility of community schools minimizes the cost of school transportation for students. Provision of substantial transportation at public cost solely for the purpose of attaining racial balance diverts resources which might otherwise be used, in a neighborhood scheme consistent with students' constitutional rights, for more directly constructive educational purposes. Where the cost of such transportation is borne privately by the families of students—assuming that public transportation facilities are adequate to cover the necessary specialized routes—it strikes regressively, imposing a heavier burden on the poor than on the affluent.

This Court in *Brown II*, in suggesting "revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis"⁴¹ as a means of complying with the equal-educational-opportunity requirement of *Brown I*, implicitly recognized the advantages of the community school system.⁴²

The unique educational advantages of the neighborhood school system, where it is administered in a manner consistent with the Equal Protection Clause, result in the accomplishment of the ultimate goal of that clause: the best possible education for all children. Pursuit of absolute racial balance in major metropolitan areas through the use of extensive busing of students deprives the school system of the singular advantages of the neighborhood concept, and in at least this respect thwarts the attainment of equal educational opportunity.

⁴¹ 349 U.S. at 300-01.

⁴² These advantages were well expressed in *Deal v. Cincinnati Bd. of Educ.*, 369 F.2d 55 (6th Cir. 1966), cert. denied 359 U.S. 847 (1967).

It has frequently been pointed out that neighborhood school systems have, on occasion, come into existence for the purpose of fostering racial segregation.⁴³ But this fact should no more prejudice consideration of the intrinsic educational merits of a racially satisfactory neighborhood school system than should these merits justify it when it is administered in a fashion which entrenches unconstitutional racial imbalance.

Other Considerations

The community school concept is capable of flexible administration: zoning, pairing, clustering, and siting of school buildings all are techniques which may be used, consistent with its advantages, and should be, when reasonable, to fulfill constitutional requirements. In addition, a majority-to-minority transfer option and specialized learning centers may be provided to ameliorate the effect of residential segregation. Techniques which destroy the advantages of the community school in pursuit only of mechanistic racial balance in the name of the Fourteenth Amendment tend to negate the very educational values in whose service they are invoked.

But these are measures that are customarily used in the racial desegregation context; they are by no means all of the factors to be taken into account in devising a plan designed to promote educational achievement for all students to the utmost.

Modern social scientists have developed studies that take into account a number of other factors. These include a determination of the racial mix that will maximize educational achievement, development of plans that maximize use of physical facilities, teachers and staff, avoidance of

⁴³ See, e.g., *Racial Isolation in the Public Schools*, U.S. Comm'n on Civil Rights 252 (1967).

resegregation and "white flight," consideration of the desirable socio-economic mix, preservation of the cultural uniqueness and autonomy of the individual student, giving effect to positive and realistic educational and vocational aspirations and other relevant factors of equal importance.⁴⁴

Such evidence is sound and available.⁴⁵ Plans based on such studies will result in greater educational achievement. Education is not based on race alone. That plan is the best plan that provides the best opportunity for educational achievement for all students. In the preparation of such a plan, racial imbalance is a consideration, but it is not the controlling factor.

It is in this light, we conceive, that the rule of reason postulated by the court below should be applied. The rule of reason makes little sense when it is couched in purely racial terms. The creation of racial balance by massive busing may eliminate racial segregation, but it may harm the general level of educational achievement. What schools need desperately is to improve that level. This Court should provide a more realistic approach to achieve that end.

VI.

CONCLUSION

The Court has the opportunity in this case to resolve the principal issues which have confused and divided the lower

⁴⁴ See, e.g., M. Weinberg, *Desegregation Research: An Analysis*, *supra*; *Equality of Educational Opportunity*, *supra*.

⁴⁵ Evidence of this nature was presented in the Norfolk case by Dr. Thomas F. Pettigrew and disregarded without mention by the Circuit Court. But Dr. Pettigrew's evidence in the Norfolk case is substantially the entire basis for the opinion of three of the judges in the *Clarendon* case. See Craven, J., concurring and dissenting in *Brunson v. Board of Trustees*, No. 14,571 (4th Cir., June 5, 1970). If testimony of this character may be used as a basis for decision in one case, it clearly deserves consideration in another.

courts and school authorities. We respectfully suggest, for the reasons that we have stated, the following:

(i) The purported distinction between *de jure* and *de facto* racial segregation should be rejected. It can be supported neither factually nor consistently with constitutional principles. The right to equal educational opportunity must be uniform throughout the United States.

(ii) The concept of racial balance is not a constitutional imperative. If pursued as an end in itself, rather than as a factor to be considered, this concept accelerates the process of resegregation and frustrates the attainment of sound educational goals.

(iii) The Constitution does not delineate the extent to which the transportation of pupils may or must be provided to achieve and maintain a unitary school system. Nor does the Constitution prescribe the extent to which school attendance zones may or must be altered for this purpose.

(iv) The principles settled by this Court must be observed: racial discrimination is a denial of equal educational opportunity; dual or segregated school systems are proscribed; and school authorities have an affirmative duty to maintain unitary systems. But these principles must be applied as the means of maximizing the educational opportunity for all students. A reasonable discretion must be allowed school authorities in assigning pupils and administering a school system so long as these principles are not contravened and the measures taken comport with the educational goal.

(v) School authorities should give appropriate weight to the educational advantages of the neighborhood or community schools and the disadvantages of extensive cross busing in urban areas, especially for young children.

(vi) In devising plans to assure a unitary school system, all relevant techniques may be considered, including the re-alignment of attendance zones, the flexible utilization of school facilities, and the assurance of opportunities for interracial learning experience.

(vii) Perhaps the overriding need is to shift the emphasis from a mechanistic approach of integration as an end in itself to the goal desired by every citizen: Equal educational opportunity in a school system structured for the highest achievement by all students.

It is not too much to say that public education is in a state of serious disarray, with increasing evidence of eroding public support. The problems and confusion relating to integration are a contributing though not the only cause. The time has come for a clarification of the principles to be applied by the courts. We respectfully submit that those outlined above are consistent both with constitutional requirements and the urgent need for improved education.

Dated September 16, 1970

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The Right to a Fair Trial*

IN this 750th year since Magna Carta, it is remarkable that so many of its basic principles still survive. This is a tribute to our Anglo-American system of justice and to the wisdom of succeeding generations in maintaining the best of the old while adapting to ever changing times. The College of William and Mary, and its Marshall-Wythe School of Law, have played a key role in the transmission and survival of these great traditions.

This audience is familiar with the illustrious record of this College, and with the names of its sons who insisted that the principles of Magna Carta be embodied in the Virginia Declaration of Rights, and then in the Bill of Rights of our Constitution. It can truthfully be said that no institution of learning, whatever its size, had a greater influence in assuring our fundamental freedoms than William and Mary.

It is therefore especially appropriate to have on this historic campus a commemorative ceremony to mark the 750th anniversary of Magna Carta. It is also appropriate that you have selected your Charter Day

*The American Bar Association has appointed a Committee to study the problems of fair trial and free press, and to confer with representatives of the news media, as recommended by the Warren Commission. This Committee has made no report, and the Association has taken no position on these problems. This talk, reflecting my personal views only, is intended merely to provide information and stimulate thought.

for this significant event. The American Bar Association, which I represent here today, is honored to be a participant.

Rather than talk generally about the glories of our heritage, I will concentrate on a perplexing problem in the 20th Century application of two of our great liberties. This is the necessity of reconciling, without serious impairment of either, the rights of free press and fair trial.

In this day of multiple and fiercely competitive news media—including radio and television—information published or broadcast by the media may be gravely prejudicial to one accused of crime and thus prevent a fair trial.

The concept and importance of free press is widely recognized. There is far less understanding of the meaning of fair trial. This is unfortunate, as nothing is more important.

It is essential to the survival of our system of government, and the individual freedom that has flourished under it, that we are ever vigilant to preserve the historic safeguards of fairness when a citizen's life or liberty is placed in jeopardy, in a criminal trial.

Our system for the administration of justice is designed to assure that the key question of guilt or innocence will be decided by impartial men solely on the basis of reliable evidence fairly presented in open court.

We give an accused the right to trial by jury—thus placing the decision with a group of fellow citizens who should be free from bias as well as from state controls. As an additional safeguard against bias, we give the judge the power and duty to set aside jury verdicts that are contrary to law and the evidence. Thus, jury and judge act as a check upon each other, and both present formidable obstacles which the State must overcome before a person charged with a crime can be sent to death or imprisoned.

To assure the reliability of the evidence presented, we have procedures and rules of evidence designed to exclude information that is untrustworthy, irrelevant or unfairly obtained. We also require that the trial be open to the public, so that what occurs may be reported and commented upon throughout the land.

In the United States these assurances of a fair and unbiased trial have not been left to precedent or custom alone. Following the prece-

dent of Magna Carta, our forefathers embodied them in our written constitution.

But even written safeguards are not enough. It is in their actual application that our society must be tested. Great principles if honored only in the abstract and not conscientiously applied in the day-to-day life of a nation, become illusory slogans that mask rather than protect.

There is increasing concern of late that the effective application of these historic safeguards of fair trial are frequently endangered by prejudicial publicity.

The beneficial influence of news coverage of the proceedings in the administration of justice is apparent. Unstinted public criticism is one of the most effective checks upon abuse of power. A diligent and enlightened press can afford substantial protection to a person accused of crime. It can also protect society from having public order undermined by inefficiency, corruption or favoritism in the enforcement of our laws. But because of their effectiveness in moving people to act, the news media also have the capacity to make a fair trial impossible by the publication without restraint of certain types of information.

The question, now receiving careful re-examination, is how to preserve the essentials of a free press and at the same time prevent publicity which is prejudicial to an accused person's right to a fair trial.

This should not be viewed as a contest between two competing rights. Nor is it a controversy between the press and the bar. Responsible leaders of both agree that fair trial and free press must be preserved and ever strengthened for each is essential to the survival of the other. The crucial task is to see if both of these rights can still be accommodated in the limited area where unrestrained publicity can endanger fair trial.

Turning to that limited area of conflict, the most serious problem relates to the publication prior to a trial of information which tends to prejudge or prejudice the accused.

Typical examples are statements by over-zealous or publicity-seeking police and prosecuting officials as to alleged confessions, as to incriminatory evidence, or to the effect that the case is "open and shut." Sometimes, in addition to a detailing of alleged evidence against the accused, there will be published accounts of a previous criminal record.

Information of this kind is likely to receive intensive and pervasive publicity when there is widespread interest in the crime or in the identity of the victim.

The problem has been complicated by radio and television, with the latter in particular now occupying a place of unprecedented influence in the homes of most citizens. The impact of these new media, and the power for good or evil which those who control them possess, would have astounded the framers of our constitution who lived—as the Craft Shops of Colonial Williamsburg so delightfully demonstrate—in a world of the hand press and limited literacy.

There can be no doubt that the intensive pretrial publicity which modern technology has made possible can be gravely prejudicial. The *New York Times* has put it quite simply:

“No individual can receive a truly fair trial if before it is held the minds of the jury have been influenced or inflamed by one sided, incomplete, prejudicial or inaccurate statements.”¹

The most spectacular example of prejudicial pretrial publicity related to President Kennedy's assassination. The details of this are known to all.²

The Warren Commission, after its exhaustive study, concluded that “news policy pursued by the Dallas authorities would have proven harmful both to the prosecution and the defense.” Not only was the publicity flagrantly prejudicial, but as the Commission pointed out: “A great deal of misinformation was disseminated a world-wide audience.”³

The Oswald case, involving the dramatic assassination of a popular President, is unique in its special circumstances. The legitimate public interest in knowing the facts created extraordinary pressures and extenuating circumstances. But in terms of the principles involved, the Oswald type of pre-trial publicity—in disregard of the rights of

¹ Editorial, November 18, 1964.

² Shortly following these tragic events, the American Bar Association concluded that “The widespread publicizing of Oswald's alleged guilt, involving statements by officials and public disclosures of the details of ‘evidence,’ would have made it extremely difficult to impanel an unprejudiced jury and afford the accused a fair trial.” Statement by Board of Governors of the American Bar Association, December 7, 1963.

³ Report of the Warren Commission, *New York Times* Edition pp. 2-13 et seq.

the accused and of the community—has become all too frequent throughout our nation.⁴

In a concurring opinion in *Irvin v. Dowd*, Mr. Justice Frankfurter stated:

“Not a term passes without this Court being importuned to review convictions, had in states throughout the country, in which substantial claims are made that a jury trial had been distorted because of inflammatory newspaper accounts . . . exerting pressure upon potential jurors before trial and even during the course of the trial.”⁵

While pretrial publicity is the principal problem area in the reconciliation of fair trial and free press, there are also troublesome questions about publicity during trial. In a long drawn out case, particularly one involving a sensational crime, public passions can be aroused by news media stories and accounts of the trial.

An even more serious problem arises during lengthy trials if information is published that has been specifically excluded from the jury by application of constitutional safeguards or the rules of evidence. The arguments made and the evidence tentatively offered when the jury has been excused from the courtroom may nevertheless reach the jury through the news media. Sometimes over-zealous counsel will make statements to the press in the course of trial that could not

⁴ One related but different question not discussed in the text here, is whether trials should be televised. The American Bar Association through Canon 35 of its Code of Judicial Ethics, holds that televising of trials should not be permitted. This Canon was reaffirmed in 1963 (with some clarification), after several years of extensive re-examination. However, some states including Texas, have nevertheless permitted some trials to be televised. Whether televising portions of a trial over the objections of the accused is unconstitutional is one of the issues presented in the *Billie Sol Estes* case pending in the United States Supreme Court, *Estes v. Texas*, S. W. 2d, cert. granted. U. S., 13 L. ed 2d 340 (1964).

⁵ 366 U. S. 717, 729 and 730 (1961). For examples of recent cases involving publicity (a) by the press, see *Sheppard v. Maxwell*, 231 F. Supp. 37 (1964); *Marshall v. United States*, 360 U. S. 310 (1959); *People v. McKay*, 37 Cal. 2d 792, 236 P. 2d 145 (1951); Jackson J., concurring in *Sheppard v. Florida*, 341 U. S. 50, 50 (1950); *State v. Van Dwyne*, 43 N. J. 369, 204 A. 2d 84 (1964). (N. J. Sup. Ct. 1964); *Tribune Review Pub. Co. v. Thomas*, 153 F. Supp. 486 (W. D. Pa. 1957); (b) by the radio, see *Baltimore Radio Show v. State*, 67 A. 2d 497 (1949), cert. denied, 338 U. S. 912 (1950); and (c) by television, *People v. Martin*, 243 N. Y. S. 2d 343 (1963); *Rideau v. Louisiana*, 373 U. S. 723 (1963); *Estes v. Texas*, S. W. 2d, cert. granted, U. S., 13 L. ed. 2d 340 (1964). See also Douglas, *The Public Trial and the Free Press*, 46 ABA Journal 840 (1960).

properly be made in court. When these traditional safeguards of truth and fairness are by-passed by publicity outside the courtroom fair trial may be directly jeopardized.

* * *

To this point, we have considered the nature of the problem. It is essentially a problem of timing, where the decisive factor is when the information is published. The publication of any of the kinds of information that we have discussed after the jury has rendered its verdict can rarely menace the right to fair trial. The problem lies in whether in the interest of safeguarding fair trial this "news" should be on occasions postponed for a relatively brief period.

Let us now look at possible solutions to this problem and the serious constitutional questions which some of them may present.

The British have effectively prevented prejudicial pretrial publicity by limiting the sources of such information and by imposing stringent penalties on the news media that publish it.

After an extensive investigation of police practices, the British concluded that prolonged secret questioning of suspects by the police was as ineffective as it was unfair. They accordingly adopted Judges' Rules to prevent unfair police tactics. The British now have virtually no problems relating to whether confessions are voluntary. They accordingly have almost eliminated the problem associated with the disclosure of such statements to the press by the police, which is still a serious problem in this country.

The major emphasis of the British system is, however, on control of the media by which pretrial information can be published. Regardless of the source, publication of pretrial information may subject the publisher to fine or imprisonment for contempt of court. The basis for the contempt is that pretrial publication of statements that impute guilt to a person, where the publisher has reason to believe that the person will subsequently be brought to trial, is an attempt to usurp the function of the court in ascertaining guilt. In effect, the rule bars all prejudicial pretrial publication after an accused has been charged. It still leaves a gray area during the period before charges are pre-

ferred and while the crime is being investigated. There can be no doubt, however, that this sword of Damocles exerts a considerable restraining influence on the British news media.⁶

However well the British system may work to preserve fair trial, its emphasis on contempt to curb the media has not generally been followed by American courts. The contempt power has always been regarded with uneasy distrust by Americans and is at best a tolerated anomaly to the fundamental principle of trial by jury.

A second factor is, of course, that freedom of speech, and freedom of the press which is but an aspect of it, has been accorded a privileged position in American society that exceeds its status in England.

In our country, the basic approach has been to permit occasional abuses on the grounds that this is the price which must be paid for the broader freedoms. We have tried to assure fair trial, without curbing the media, the bar or the police, by making corrective adjustments in our trial procedure. These adjustments have included (i) the change of venue, to remove the trial to an area not affected by the publicity; (ii) the examination of prospective jurors on the *voir dire*, with the view to eliminate those who may have been influenced; (iii) the isolation of juries in protracted cases; (iv) the postponement of trial for substantial periods, to allow the effect of prejudicial publicity to wear off; and (v) the reversal of convictions where this is necessary to assure justice.

These procedural devices or remedies serve useful purposes when wisely employed. But they still fall short of a satisfactory solution to the basic dilemma.

* * *

A number of new approaches to reconciliation of free press with fair trial are now being studied—and several are being tried. These approaches may be divided into the voluntary and the coercive.

⁶ Publicity during trial also does not seem to present a serious problem in England. Perhaps this is in part attributable to the fact that the same rules applicable to pretrial publicity apply to any information originating outside the courtroom during trial. Statements outside court by a prosecutor, who holds no office and is appointed from the bar to prosecute a single case, or by defense counsel would probably be severely reprimanded by the court or the Inns of Court. While the occurrences of the courtroom may be reported freely, attempts to influence the trial and personal criticism of the court may be punished as contempt.

The Warren Commission recommended that press, bar and law enforcement officials cooperate in establishing "ethical standards concerning the collection and presentation of information to the public so there will be no interference with pending criminal investigations, court proceedings, or the rights of individuals to a fair trial." Some have urged that this be done by formulating, on a national scale, a code of ethics for news media, police and lawyers.⁷ Such an approach has already been initiated on a state level in Massachusetts, where a substantial part of the news media agreed to certain guidelines in the coverage of crime.⁸

The two obvious difficulties with a voluntary approach are the difficulty of securing agreement on common standards and the impossibility of consistently enforcing such standards once they are agreed upon. But voluntary standards still merit careful consideration. They provide guides for the conscientious, and even the less responsible elements may hesitate to violate them out of fear of public censure. Indeed, voluntary self restraint by all concerned pursuant to agreed standards may be a necessary step if we are to avoid some of the elements of the stringent British system.

But whatever the media may in time resolve to do, there is a growing conviction that the courts and the organized bar must act to control more effectively the source of much of the information which is published.⁹ The present Canons of Professional Ethics, adopted in 1908, contain provisions designed to prevent lawyers from "trying their cases in the newspapers." For various reasons, however, enforcement of the Canons in their present form has become increasingly difficult. Their revision is presently under study.¹⁰

At least one court has not waited for revision of the Canons by the

⁷ Brookings Institute is conducting a study of this subject.

⁸ This plan was drafted by representatives of the news media and of the Massachusetts and Boston bars. It is, of course, too soon to evaluate the results.

⁹ The American Bar Association has recently announced the formation of a distinguished committee on Fair Trial and Free Press to examine the role and responsibility in this area of law enforcement officials, lawyers and the courts. This committee is a part of a major project recently undertaken by the Association to review the entire spectrum of criminal justice with the object of formulating and recommending standards "to improve the fairness, efficiency and effectiveness of criminal justice in both state and federal courts."

¹⁰ A special committee of the Association is engaged in this review.

organized bar. In its recent decision in the *Van Duyne* Case, the New Jersey Supreme Court broadly interpreted the present Canons to prohibit "unfair and prejudicial" publicity both before and during the trial of criminal cases.¹¹ It indicated that potentially prejudicial statements by prosecutors and defense attorneys to news media would constitute unprofessional conduct. Similar statements by police were also condemned, although the court left violations by the police to be punished by their superior officers rather than by the court itself.¹²

A recent development of far-reaching significance is the recommendation of the Judicial Conference of the United States for federal legislation in this area. Such legislation would make it a criminal contempt, punishable by fines up to \$1,000 for U. S. attorneys, F. B. I. agents or any other employee of the United States or defense counsel to make available for publication information, not of record, which might affect the outcome of any pending criminal litigation.¹³

Another recent proposal, at the state level, comes from the Philadelphia Bar Association. It recommends a code to be adopted as a rule of court in Pennsylvania, which would restrict law enforcement personnel, defense counsel and judges from disclosing prejudicial information about criminal cases. Moreover, it would bar reporters from access to certain police records and the offices of the police and prosecutor under certain circumstances.

* * *

It must be remembered that coercive measures to restrain prejudicial publicity raise serious constitutional questions. At the outset we must recognize that the First Amendment, directly and through the

¹¹ *State v. Van Duyne*, 43 N. J. 369, 204 A. 2d 84 (1964).

¹² The New Jersey decision raises a number of interesting questions: Can the court's prohibition be applied effectively to the police, who are not directly subject to the court's control? If the responsible police officials will not publish violations, does the court have the power to cite the officers or their superiors for contempt? It can be argued that under the common law such power is inherent in the courts. See Griswold, Address at ABA Annual Meeting, New York, August 11, 1964.

¹³ *Washington Post*, December 23, 1964. See also editorial in the *Post* (December 24, 1964) expressing reservations as to the proposal of the Judicial Conference.

Fourteenth Amendment, specifically protects freedom of speech and freedom of press. If interpreted as imposing absolute prohibitions against any restraints on speech or press,¹⁴ they would seem to foreclose the adoption of any direct curbs on the press. If on the other hand, in accordance with the prevailing view, these freedoms are to be balanced against other constitutional safeguards,¹⁵ they still impose a heavy burden on anyone seeking to limit speech or press.¹⁶

For a time, early in this century, it seemed that American Courts were free to follow the English system at least partially. In *Patterson v. Colorado*,¹⁷ and in the *Toledo Newspapers* case,¹⁸ the court did not consider the First Amendment a bar to use of the contempt power to punish publications which were intended to influence the outcome of pending cases.

But the decision in *Toledo Newspapers* was subsequently overruled in the 1940's.¹⁹ Since that time *Bridges v. California*²⁰ has been the key case in this area. That case lays down the stringent rule that the contempt power is available to punish a publication or speech outside the courtroom only if it constitutes "a clear and present danger" to the administration of justice.

¹⁴ See Black J. dissenting, in *Scales v. United States*, 367 U. S. 203, 359 (dissenting opinion); *Konigsberg v. State Bar*, 366 U. S. 36, 56 (dissenting opinion); *Beauharnais v. Illinois*, 343 U. S. 250, 267 (dissenting opinion). See also Black, *The Bill of Rights*, 35 N. Y. U. L. Rev. 865.

¹⁵ See, e.g. *Communist Party v. Subversive Activities Control Board*, 367 U. S. 1 (1961); *In re Anastaplo*, 366 U. S. 82 (1961); *Konigsberg v. State Bar*, 366 U. S. 36 (1961); *Frantz, The First Amendment in the Balance*, 71 Yal. L. J. 1424 (1962); *Fried, Two Concepts of Interests: Some Reflections on the Supreme Court's Balancing Test*, 76 Harv. L. Rev. 752 (1963). Cf. *City of El Paso v. Simmons*, U. S., 33 L. W. 4126 (Jan. 18, 1965).

¹⁶ See *National Association of Colored People v. Alabama*, 357 U. S. 499 (1958), *New York Times v. Sullivan*, 376 U. S. 254 (1964). Note, the Supreme Court 1959 Term, 75 Harv. L. Rev. 129 n. 194 (1960) states in referring to a concurring opinion in *Talley v. California*, 362 U. S. 60 (1960), "possibly Mr. Justice Harlan is implying that the absence of a presumption of constitutionality [of state statutes] in free speech cases, see *Thomas v. Collins*, 323 U. S. 516, 519-30 (1945), should shift [the burden of proving constitutionality] to the state."

¹⁷ 205 U. S. 454, 462 (1907).

¹⁸ *Toledo Newspaper Co. v. United States*, 247 U. S. 402 (1918).

¹⁹ See *Nye v. United States*, 313 U. S. 33, 51-52 (1941) and *Bridges v. California*, 314 U. S. 252 at 267 (1941). The *Bridges* case at page 257, note 13, also distinguished *Patterson v. Colorado*, supra, as not having been decided on the basis of the First Amendment.

²⁰ 314 U. S. 252.

It is significant to note however, that *Bridges* and subsequent decisions of the Supreme Court following it have all involved publications which might have influenced judges in discharging their duties.²¹ None has involved prejudicial publications which interfered with jury trial by influencing, prejudicing or intimidating jurors—and this is the heart of the present problem. In many situations it may well be that publicity that would not sway a judge might influence a jury and thus constitute a clear and present danger to the administration of justice.²²

Constitutionality might involve additional considerations. For example, the special disciplinary powers of the courts and the bar over lawyers have long been recognized.²³ Power to impose limitations on improper police procedures may also reside in the courts.²⁴ Whether as asserted contempt is tried by a judge or by a jury may also be decisive.²⁵

Enough has been said to indicate that there are no quick and easy solutions. Remedial action—other than that which is voluntary—must take into account constitutional as well as public policy considerations.

²¹ See *Pennekamp v. Florida*, 328 U. S. 332 (1946); *Craig v. Harney*, 331 U. S. 367 (1947). In *Woods v. Georgia*, 370 U. S. 375 (1962), though defendant was also charged with attempting to influence a grand jury in the course of its investigation, the Court found the record was barren of any evidence of any interference with the grand jury's functioning. In *Maryland v. Baltimore Radio Show, Inc.*, 338 U. S. 912 (1950), where pretrial publicity allegedly forced the defendant to waive right to jury trial, the Court denied certiorari, which of course was no adjudication of the issues presented in that case.

²² See Emerson, *Toward A General Theory of the First Amendment*, 72 *Yale L. J.* 854, 924-926 (1963). Cf. *People v. Goss*, 141 N. E. 2d 385 (Ill. 1957), 170 N. E. 2d 113 (Ill. 1960), *cert. denied.*, 365 U. S. 881 (1961); *Goss v. Illinois*, 204 F. Supp. 268 (1962), 312 F. 2d 257 (7th Cir. 1963).

²³ See e.g. *Konigsberg v. State Bar*, 366 U. S. 36 (1960) and *In re Anastaplo*, 366 U. S. 82 (1961), both involving questions concerning the First Amendment.

²⁴ Griswold, address at ABA Annual Meeting, New York, August 11, 1964.

²⁵ Only last year in *United States v. Barnett*, 376 U. S. 681 (1964), the Supreme Court split 5 to 4 in holding that every person charged with criminal contempt for action outside the courtroom need not be accorded a trial by jury. Provision for trial by jury should be seriously considered if it ever becomes necessary to invoke contempt powers to safeguard fair trial. The Clayton Act (38 Stat. 738-739, as amended, 18 U. S. C. §§ 402, 3691) and the Norris-LaGuardia Act (47 Stat. 72, 18 U. S. C. § 3692) both provide for jury trial of certain charges of criminal contempt. Also see generally, Frankfurter and Landis, *Power to Regulate Contempts*, 37 *Harv. L. Rev.* 1010, and majority and dissenting opinions in *Green v. United States*, 357 U. S. 165 (1958).

But to urge caution is not to counsel inaction. There is, as we have seen, strong evidence that present measures are not enough. Certainly, it is a first responsibility of the legal profession to put its own house in order. Most prejudicial information (though by no means all of it) originates within the legal process—from police, prosecution officials and lawyers. But action by the legal profession alone, however strongly taken, will remain only a partial solution unless and until the police and the news media also exercise appropriate restraint. In short—as the Warren Commission implied—we have a common problem requiring thoughtful and cooperative action by all concerned.

In our efforts to fashion additional safeguards for fair trial, within the framework of the Bill of Rights, we must avoid being confused by generalizations and slogans. There has been a disposition sometimes to equate the media and the public. Again, some have talked about a “public right to know” as if it were a constitutional right.²⁶

These generalizations miss the point. The essence of the freedom guaranteed by the First Amendment is to permit unlimited expression of views about matters of public and political concern and to respect the sanctity of individual conscience and belief. We have accordingly long recognized that there are areas of privacy where respect for the individual and his rights precludes the satisfaction of public curiosity.²⁷

We must bear in mind that the primary purpose of a public trial, and of the media's right as a part of the public to attend and report what occurs there, is to protect the accused. When we speak of the Constitutional right to a public trial, we do not mean a spectacle before the public at large. The guarantee of a public trial was never intended to protect any right of the public to be entertained. The purpose of

²⁶ The people's “right to know” has been used to express the view that government should operate in the public and thus should not withhold information from the press. This “right” has not been held to originate in the Constitution, however, but requires the enactment of legislation. See Comment, *Open Meeting Statutes: The Press Fights for the “Right to Know,”* 75 Harv. L. Rev. 1187 (1962).

²⁷ For example, we have long recognized that the public in general may be excluded from certain trials of juvenile and domestic relations problems. See also, generally, Warren & Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890). Some have also urged that the right to free press protects, at least partially, the press from being required to disclose ownership, authorship and news sources. See e.g., Note, *The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil*, 70 Yale L. J. 1084 (1961); Cf. *Talley v. California*, 362 U. S. 60 (1960).

this guarantee is to prevent secret trials and also to assure, through the safeguards of appropriate public scrutiny, that the administration of justice is honest, efficient and in conformity with law. Thus, the ultimate public concern is not the satisfaction of curiosity or any abstract "right to know"; rather, it is to be sure that trials are in fact fair and according to law.

As this discourse continues as to how best to reconcile these great constitutional rights, it is well to remember that it is only by assuring that justice is done to individuals from day to day that we can assure that all of our freedoms, including free press, are preserved through the years to come.

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