

1998

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Recommended Citation

Whitman, Christina B. "The Reluctant Justice: Lewis F. Powell Jr. Personifies the 'Quality of Attentiveness'." *A. B. A. J.* 84, no. 10 (1998): 100.

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The Reluctant Justice

Lewis F. Powell Jr. personified the 'quality of attentiveness'

BY CHRISTINA BROOKS WHITMAN

Lewis F. Powell Jr. came to the U.S. Supreme Court in 1972 reluctantly and at an age when many professionals are anticipating retirement rather than a career change.

But the Court suited him. He grew to love the work, although he often found it agonizing, and he thrived on the role he played in the history of the Constitution.

By the time he retired in 1987, after more than 15 years on the Court, Powell had come to represent a kind of ideal justice—moderate, flexible, careful. In a sense, his entire life had been preparing him for this final, unexpected role.

I clerked for Justice Powell only a few years after he was appointed. It was a time when women were just beginning to move into legal work in significant numbers, and there was widespread skepticism about whether we really could be tough enough to do what was expected of lawyers. The lawyer envisioned by this skepticism was an abrasive, extraordinarily aggressive person, willing to press the client's perspective relentlessly, and eager to win at any cost.

Powell, undeniably successful in every aspect of his legal career, was the antithesis of this image. For all his clerks—perhaps especially for the women—he modeled an approach to lawyering that was built on graciousness and collegiality, intelligence and hard work.

Law as High Calling

Justice Powell was an idealist, not only by temperament but also through experience. Decades of practice had led him to think of law as a high calling and to view the legal profession as composed, at its best, of people of goodwill who were

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trained to facilitate mutual understanding and to devise practical solutions to difficult problems. Powell was not cynical about corporate interests and governmental goals. In public service, including a term as ABA president in 1964-65, he had

been enormously conscientious and careful, and he believed that others shared his self-restraint.

Similarly, as a justice, Powell was uncomfortable with clean-cut, analytically nifty solutions that often appealed to law clerks. He would listen politely and then remind us that lawyers, and particularly judges, were statesmen. By this he meant that it was important to remain aware that cases are deeply complex and that we should be as conscious as possible of the impact of legal decisions on the lives of people.

Justice Powell was deeply suspicious of ideology. This could be extremely frustrating to passionate advocates, who occasionally interpreted his favorite technique of "balancing the interests" as a way of avoiding difficult decisions. Powell might respond that the difficulty

was in the need to be attentive to what was at stake—for everyone involved. Balancing was a way to preserve a place for all considerations in the evolving judicial solution.

It was important to him, for example, in a case like *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), in which he wrote the decisive opinion striking down strict racial quotas, that the concerns of those on both sides of the dispute not only be considered in arriving at a solution but also be acknowledged and articulated in the opinion itself.

A Commitment to Collegiality

The method of work in the Powell chambers was built on the assumption that the best results are achieved collegially. This conviction was a product of his years in law practice, primarily at Hunton & Williams of Richmond in his native state of Virginia. An ideal Powell opinion was composed of clean, straightforward sentences clearly organized, meticulous and honest about the reasons that motivated the result. This style seemed to come to him naturally. Law clerks achieved such polish and directness only by working and reworking several drafts.

We occasionally remarked on his gift for selecting compatible clerks. I have come to see, however, that his talent lay beyond the selection of people who could work well together. We rose to the occasion because of the moral character of the chambers, in which both the method and the substance of the justice's work were based on mutual respect.

It is common in speaking of Justice Powell to talk of his graciousness. Grace, the justice's life made clear, is not in tension with lawyerly skills. Rather, it manifests that quality of attentiveness that distinguished him as a person and a judge. ■