



2-25-1978

## The Lawyer As a Citizen, University of Virginia Law Review Banquet

Lewis F. Powell Jr.

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lfp/ss 2/23/78

University of Virginia  
Law Review Banquet  
Charlottesville, Va.  
February 25, 1978  
Lewis F. Powell, Jr.

*I used a copy of  
this as a text -  
but with liberal "ad libbing"  
in the delivery.*

*File  
copy*

THE LAWYER AS A CITIZEN

It is customary for a speaker to begin by saying how happy he is to be before his audience, and take note of the importance of the occasion. I will respect this custom only in part. A judge - especially one on our Court - is not really sure whether he is happy to be before the faculty and law review members of a national law school. After all, you are our leading critics.

But you have been good enough to give me this opportunity to talk back.

*you saw:*  
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It is customary for a speaker to begin by saying how happy he is to be before his audience, and take note of the importance of the occasion. I will respect this custom only in part. A judge/- especially one on ~~at~~ our Court/- is not really sure whether he is happy to be before the faculty/ and law review members/ of a national law school. After all, you are our leading critics.

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*Perhaps you have heard  
Hardy Dellard*

Perhaps you have heard Hardy Dillard say/that he had rather be a professor than a judge:/ he had rather hear himself talk/ than listen to others.

However *I* may feel about being here, we can agree that this is an important occasion. For the third year members of the Law Review, it marks the end of some of the most demanding work that you will ever experience.

The outgoing managing board deserves congratulations on a fine year, climaxed by publishing nine editions of the Review. The incoming

*who ever you may be,  
Board as well as members  
of the Editorial Staff,*



*who ever you may be,*  
Board, <sup>^</sup>as well as members of the  
editorial staff, <sup>^</sup>also merit warm  
congratulations. You will have an  
experience envied by every lawyer <sup>^</sup>  
and law student <sup>^</sup>, not fortunate enough  
to have it.

The occasion also is important  
for me. Lewis III has been on my  
payroll <sup>^</sup>for 25 years. Now that he  
is <sup>being</sup> relieved from Law Review duty,  
perhaps <sup>^</sup>I can count on some relief <sup>myself</sup>  
by the end of May.

Choosing a subject has concerned  
me. With a two hour cocktail period,  
followed by a rather fulfilling dinner,

*you are likely to be  
more interested in brevity*

I will talk about a  
Lawyer's dual role in our society, 4.

you are ~~no doubt~~ <sup>likely to be</sup> more interested in  
brevity / than in content: ~~at least I~~  
~~would be.~~ But I was told that you do  
expect a speech.

\* \* \*

*The seniors here*

~~All of you~~ soon will leave the  
cloistered life of student and  
~~and a new kind of student~~  
become lawyers and citizens. You  
already are citizens, but there is  
something special about ~~also~~ being both,  
~~a lawyer.~~ In a sense you became a  
privileged citizen - an officer of  
the courts, and possessed of the  
best education money can buy.

With privilege, comes responsibility  
not just that stated in the Code of

*Professional Responsibility.*



Professional Responsibility - but the broader responsibility of citizenship. For lawyers, especially you who have demonstrated high intellectual competency, this means leadership as a citizen as well as a lawyer.

In a democracy ~~there always is~~ <sup>the</sup> a need for leadership <sup>is constant,</sup> and throughout our history lawyers have been expected to provide it. <sup>Alexis</sup> Alexis de Tocqueville, nearly a century and a half ago questioned "whether democratic institutions can long be maintained . . . if the influence of lawyers in ~~public business~~ <sup>does</sup> did not increase in proportion to the power of the people."

*Viewing the problems*

Viewing the problems that confront our country/and the world,/a cynic could say that even lawyers cannot save the republic. A less charitable critic might say/lawyers got us into ~~much~~ of the trouble;/let us look elsewhere for salvation.

But I still hold with de Tocqueville. There is an inscription on the wall of the Association of the Bar of the City of New York, attributed to Harrison Tweed:

In substance, it says: "Lawyers are the best people to work with,/to fight ~~play~~ with,/and certainly to drink with."

*I subscribe to these  
sentiments.*



I subscribe to these sentiments.

\* \* \*

But I am not here to talk about playing or drinking. ¶ Lawyers have a virtual monopoly on the judicial branch of government. They are influential in making laws as well as enforcing them. They also are the indispensable advisers to leaders in government, business and labor.

Through our system of justice, lawyers have the primary responsibility for protecting the liberties guaranteed by the Bill of Rights.

x x x

In a sense, lawyers present a paradox. They have never ranked high in popularity polls. But they do occupy a place of influence in our society that is unique.

But we have no divine right to enjoy that place.

But we have no divine right /to enjoy that place. It is one we must continue to earn by responsible leadership /<sup>both</sup> within the profession, and as citizens.

First, a word about a lawyer's duty to our system of justice - a system that is in <sup>some</sup> trouble. Although this is not the occasion to catalogue our problems, I will mention the overriding <sup>one</sup> ~~problem - certainly on the civil side.~~

In a word, it is "overload". A 1976 Justice Department study, chaired by then Solicitor General Robert H. Bork, concluded:

"The Fed Cts

*Quote*

"The federal courts now face a crisis of overload, / a crisis so serious that it threatens the capacity of the federal system to function as it should. This is not a crisis for the courts alone, / it is a crisis for litigants who seek justice, / for claims of human rights, / for the rule of law, / ~~and~~ *It* is therefore / a crisis for the nation." *End Quote*

Attorney General Bell recently repeated phrases we all hear too frequently: he spoke of the "law explosion", and the "crisis in the courts".

*The underlying causes  
are well known.*



The underlying causes are well known. The vast complexity of modern society is the root cause. This results in ~~(1)~~ the enactment by the legislative branch / of remedial and complex legislation ~~— laws deemed desirable to meet the social needs and technological developments of our time;~~ and (2) <sup>in</sup> expansive interpretations by the courts, / ~~in~~ particularly <sup>by</sup> our Court. <sup>We</sup> ~~that~~ have refurbished rights that lay dormant. ~~Indeed~~ <sup>We</sup> <sup>even</sup> ~~have even~~ invented a few new ones.

The litigation resulting from innova~~ct~~ive legislation / and new court

*Reasons /*

decisions/is only a part of the  
overload problem. The mere example  
of litigation/fosters a desire by  
others to litigate. Witness the  
escalation of malpractice suits. And  
how many new suits will be spawned/  
by the recent \$125 million verdict  
against Ford Motor Company?

It has been said that "litigation  
has become the nation's secular  
religion". Professor Maurice  
Rosenberger of Columbia has warned  
of a "virtual/epidemic of hair  
trigger suing".

*For young lawyers  
about to enter  
the practice*

*all of this does not  
sound too bad!*

For young lawyers about to enter the practice, ~~this sounds great~~. Law is the new "growth industry". The slogan ~~of some~~ plaintiff's lawyers is the more "abundant verdict". For defendant's lawyers the cheering thought is more chargeable hours at rates increasing annually.

I could end this talk here, leaving you happy with visions of these "sugar plums". But there are clouds on the horizon. The public will not tolerate lawyer prosperity indefinitely unless the system serves public needs. There will be an outcry against those of us responsible

*for justice,*



for justice, comparable to that we now hear against <sup>some</sup> doctors and hospitals.

Serious delays at every level, in both state and federal courts, already are intolerable in too many jurisdictions. The cost of civil litigation, /pushed ever higher by delay, /often is beyond the reach /of an individual or small business.

The making available of legal services /to low and middle income persons, /at costs they can afford, /remains a serious problem - despite considerable effort by the bar.

To be sure, many cases - for example, strike suits designed to

*coerce a settlement*

to coerce a settlement - do not deserve to be litigated. But the consequences of delay and expense/also often deny to persons with just causes/and meritorious defenses,/reasonable access to justice.

Even so, the courts are overloaded;/ the system is not geared to accommodate the load,/and the quality of justice is thought by many/already to be deteriorating.

\* \* \*

I have mentioned the overload problem, and some of its consequences

*to emphasize  
the duty of  
lawyers.*

to emphasize the duty ~~and responsibility~~ of lawyers. We have the capacity - through bar organizations, /the law schools, /and working with government - to assure that the system is responsive /to legitimate /societal demands.

Although few would say that the profession is discharging fully its duty to justice, there is a <sup>fresh</sup> ~~greater~~ awareness today of the need for - responsible leadership, ~~than in years past~~. Indeed, through the organization of the judiciary and the bar, /and the Department of Justice, /a great deal is underway. Much that is being done is commendable.

*For example,*



Another, and longer speech, would be required to describe some of the major reforms that now are receiving serious attention. The newly created office for Improvement in the Administration of Justice, headed by your Professor Daniel Meador, is providing innovative leadership - both independently and in close cooperation with professional organizations.

It is thus evident that you <sup>are</sup> ~~will~~ ~~be coming into~~ <sup>entering</sup> the profession when the need for change and reform <sup>is</sup> ~~are~~ <sup>urgent,</sup> challenging. ~~Indeed, the need is~~ ~~urgent.~~ For lawyers with a proper

sense of ~~their~~  
professional  
responsibility,

sense of ~~their~~ professional responsibility, there will be many opportunities to serve the cause of justice.

~~If you practice or teach,~~ <sup>T</sup> the best medium for service <sup>/</sup> is through the organized bar. I urge ~~each of~~ you to affiliate with local, state and national bar organizations.

During the early years there will be feelings of some frustration <sup>/</sup> because you will be junior to most of those in leadership positions. But state and national organizations <sup>/</sup> now have "young lawyer" components, and if you serve them with perservance you

*will find meaningful things to do.*



will find meaningful things to do.

\* \* \*

I have been talking - obviously in broad terms - about the responsibility of lawyers for our system of justice.

We <sup>also</sup> ~~also~~ have a ~~broader~~ duty to be constructive citizens / in the affairs of our communities, / states / and - in time - our country. Thomas Jefferson once wrote:

*Quote*

"There is a debt of service / due from every man / to his country, proportioned to the bounties which nature and fortune / have measured to him." *End Quote*

*Most of the leadership in Jefferson's time,*



(No p. 20)

~~Virginia, and many moved on to national service.~~

Most of the leadership in <sup>Jefferson's final</sup> ~~these~~ ~~great years~~ / though by no means all / - came from lawyers. de Tocqueville later observed:

"The government of democracy / is favorable to the political power of lawyers. When . . . the noble and the prince are excluded from government, / lawyers take possession of it . . . since they are the only men of information and sagacity. . . ."

The French political scientist exaggerated, / and even as he was

writing in the  
1830's,

lawyers

writing in the 1830's, lawyers were being put in their place/by the egalitarian ideas of the Jacksonian era.

But the essence of the views expressed by Jefferson and de Tocqueville remains valid: every citizen should participate,/and - generally - lawyers are better qualified than most.

Although the more glamorous service/may seem to be at the national level,/the opportunities most likely to be available/are less pretentious, ~~but perhaps no less important~~. I am thinking, for example, of elective

*office, and  
service on  
boards &  
commissions,*

*stet*



office, / and service on boards and commissions of government, / at local and state levels.

I emphasize, also, that <sup>politics and</sup> government service <sup>is</sup> <sup>one</sup> only one aspect of citizen participation. Without holding office, one can help make the two-party system function as it should.

↖ And, In every community, there are the civic, / charitable, / religious / and cultural organizations / privately funded and led. / These organizations contribute vitality / to the quality of American life.

¶ Although establishing and maintaining a deserved reputation as a competent lawyer



Although establishing and maintaining a deserved reputation/ as a competent lawyer/ is a first priority, I urge you to be a participating citizen/ in the full sense of the term.

Most law firms will encourage reasonable participation in citizen activities. Indeed, I would hesitate to affiliate with a firm/ that was negative/ or niggardly in this respect.

I do caution against expectation/ of early leadership roles. Career advancement - and community and even professional recognition - may come

*more slowly than  
you expect.*

more slowly than you expect. But you can be reasonably sure that the long road of a <sup>law</sup> ~~large~~ career offers both <sup>an</sup> ~~the~~ opportunity for professional success and gratifying service to society.] Lawyers, by training and aptitude, tend to become leaders wherever they participate.

A few years ago, the retiring President of the Virginia Bar Association - a lawyer who had attained many distinctions in his long career - concluded his annual address by saying: "being a lawyer is the greatest honor of my life."

*I am not disposed*



Jay Wilkinson, John Jeffries,  
David Boyd, Phil Jordan  
Charlie Ames (Paul Stephan<sup>26.</sup>)

I am not disposed to disagree  
with that judgment.

\* \* \*

Now a personal postscript: I  
pay tribute to Jay Wilkinson, John  
Jeffries, David Boyd, Phil Jordan  
and Charlie Ames - clearly among  
the ablest / of all clerks who have  
served at the Court / during my six  
Terms. They also are my friends.

¶ I look forward next Term to having  
Paul Stephan.

But I don't want you at Virginia /  
to think you have a lien on the  
Powell Chambers. After all, I am a  
W&L man.

Washington  
Lee

¶ I nevertheless  
thank warmly



I nevertheless thank warmly /  
this famous law school / and its  
dedicated faculty / for sending me these  
*superbly trained*  
~~well~~ taught young lawyers.

*open long file*

June 9, 1977

Dear Jon:

I will be happy to speak at the Review's 56th annual banquet on Saturday, February 25, at the University.

I particularly appreciate having this opportunity to be with Lewis and colleagues whom he so much respects and admires.

In one talk this week with Lewis, I judge he carried Law Review work with him to Houston.

I hope you have the opportunity for some well-deserved vacation this summer.

Sincerely,

Mr. Jonathan B. Sallet  
Editor-in-Chief  
Virginia Law Review Association  
Charlottesville, Virginia 22901

lfp/ss

bc: Lewis III

copy

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UNIVERSITY OF VIRGINIA SCHOOL OF LAW

CHARLOTTESVILLE, VIRGINIA 22901

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EDITOR-IN-CHIEF

**JUN 21 1977**

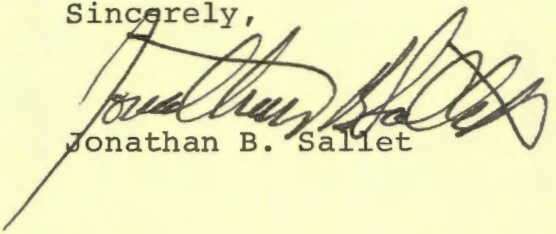
June 20, 1977

The Honorable Lewis F. Powell, Jr.  
Associate Justice  
Supreme Court of the United States  
Washington, D.C. 20543

Dear Justice Powell:

I am very pleased that you will be able to address the annual Virginia Law Review banquet on February 25, 1978. In the next few months we will finalize arrangements for the banquet. I will be in touch in the fall to inform you of the details.

Sincerely,

  
Jonathan B. Sallet



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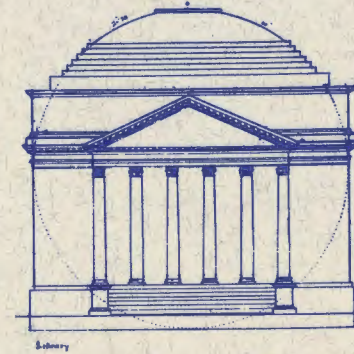
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# VIRGINIA LAW REVIEW



*ANNUAL BANQUET*

*February 25, 1978*

*in the Rotunda*

*at the University of Virginia*



# VIRGINIA LAW REVIEW

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THE MEMBERS OF THE VIRGINIA LAW REVIEW  
WELCOME YOU TO OUR ANNUAL BANQUET.

*Cocktails* AT 6:00—LOWER WEST OVAL ROOM

*Dinner* AT 8:00—THE DOME ROOM

## PROGRAM

*Remarks by*

DEAN EMERSON SPIES

PROFESSOR J. HARVIE WILKINSON III

*Honored Guest and Featured Speaker*

THE HONORABLE LEWIS F. POWELL, JR.,  
ASSOCIATE JUSTICE OF THE  
SUPREME COURT OF THE UNITED STATES

The topic of Mr. Justice Powell's speech is  
"The Lawyer as a Citizen"



REMARKS OF JAY HARVIE WILKINSON, III AT THE  
VIRGINIA LAW REVIEW BANQUET INTRODUCING  
JUSTICE LEWIS F. POWELL, JR.  
February 25, 1978

It is a great pleasure to introduce the Honorable Lewis F. Powell, Jr., Associate Justice on the U.S. Supreme Court with tenure. His topic is one in which we are have more than passing curiosity. In fact, I think it a rather catchy one. It is the Bakke Case: Predictions and Prophecies. This is an address that could only be given within the bosom of the Law Review family, so I hope that when Justice Powell speculates on how his colleagues will vote, you will all keep it amongst yourselves. If anyone should be here from that treasonous institution--the press--you are under a prior restraint not to print.

It is a great pleasure to have Justice Powell here because he is a great friend of the University of Virginia Law School--as attested by his selection of a large number of Virginia law clerks. I had planned to write the names of the Powell clerks for all of you to see, but one of the deficiencies of the Dome Room is that it lacks a blackboard. The first Powell clerk was, of course, myself. The second was John Jeffries (John, you may remain seated). John did ask me to report, in all modesty, that he thought the quality of the Virginia clerk began to taper off a bit after the second year.

At any rate, John was followed by David Boyd, Phil Jordan, last year Charlie Ames and next year Paul Stephan. This year, however, there is no Virginia clerk, and I scratched my head trying to figure out why. I ran down the names of the other Virginia clerks on the Supreme Court: Mike Wallace for Justice Rehnquist, Henry Parr for the Chief Justice, and Mike Sundermeyer for Justice Blackmun.



Suddenly the answer struck me like a thunderbolt. The absence of a Virginia clerk in Justice Powell's chambers was a bold assertion of independence from the rest of the Nixon bloc on the Court. True, commentators have been slow picking up in this, but it has to be the only explanation.

\* \* \* \* \*

Before Justice Powell became a Supreme Court Justice, he was a first citizen of Virginia and a first citizen of the American Bar. His community contributions at the local, state, and national level are legion. Rather than recite these many achievements, I think I should concentrate on the one that matters.

In my view, Justice Powell is the leader of the present Supreme Court, and I only hope that my great affection for him and for Mrs. Powell has not clouded my judgment.

Let me elaborate just a bit. There has been a lot of alarmist talk and irresponsible chatter about how a so-called Nixon Court was going to repeal the work of the Warren Court in the decades just past. Today I think that talk has mostly died down. The Warren Court's course has been trimmed and modified but certainly not dismembered.

The lion's share of the credit for this belongs to Justice Powell. He has resisted over-charged rhetoric, over-simplified solutions and over-abrupt shifts in doctrine. He believes the Court ought not to lurch forward or backward but move in a long, slow arc. History will show that the major issues of our time--executive privilege, capital punishment, and without laying claim to inside knowledge, I predict affirmative action, will have been handled by the present

Court with sophistication, sobriety and balance. I think again the tone of the Court's work owes much to Justice Powell, not simply to his opinions, but to his quiet persuasion and the affect of his presence on his colleagues.

When one examines the trends of the present Court--the move to greater autonomy of public education, the greater restrictions on the equitable discretion of the district judge, the expansion of personal lifestyle freedoms, the restructured relationship between state and federal courts, and the rebalancing of the interests of law enforcement and the criminally accused--one finds not just one but often two or three major Powell opinions.

There is no need to go on. I just wish to close by saying that I--and I know I speak for John Jeffries and Tyler Baker as well--have all immensely profited by the opportunity of close association with this very unique and remarkable man.

Ladies and Gentlemen, Mr. Justice Lewis F. Powell, Jr.



lfp/ss 2/21/78

*crisis in courts, etc } -4  
career*

University of Virginia  
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*File  
of  
Speaker*

THE LAWYER AS A CITIZEN

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But you have been good enough to give me this opportunity to talk back. Perhaps you have heard Hardy Dillard say that he had rather be a professor than a judge: he had rather hear himself talk than listen to others.

However I may feel about being here, we can agree that this is an important occasion. For the third year members of the Law Review, it marks the end of some of the most demanding work that you will ever experience.

The outgoing managing board deserves congratulations on a fine year, climaxed by publishing nine editions of the Review. The incoming Board, as well as members the editorial staff, also merit warm congratulations. You will have an experience envied by every lawyer, and law student not fortunate enough to have it.



The occasion also is important for me. Lewis III has been on my payroll for 25 years. Now that he is relieved from Law Review duty, perhaps I can count on some relief by the end of May.

Choosing a subject has concerned me. With a two hour cocktail period, followed by a rather fulfilling dinner, you are no doubt more interested in brevity than in content: at least I would be. But I was told that you do expect a speech.

\* \* \*

All of you soon will leave the cloistered life of student and become lawyers and citizens. You already are citizens, but there is something special about also being a lawyer. In a sense you become a privileged citizen - an officer of the courts, and possessed of the best education money can buy.

With privilege, comes responsibility - not just that stated in the Code of Professional Responsibility - but the broader responsibility of citizenship. For lawyers, especially you who have demonstrated high intellectual competency, this means leadership as a citizen as well as a lawyer.

In a democracy there always is a need for leadership, and throughout our history lawyers have been expected to provide it. Alexis de Tocqueville, nearly a

century and a half ago questioned "whether democratic institutions could long be maintained . . . if the influence of lawyers in public business did not increase in proportion to the power of the people".\*

Viewing the problems that confront our country and the world, a cynic could say that even lawyers cannot save the republic. A less charitable critic might say lawyers got us into many of these problems; let us look elsewhere for salvation.

But I still hold with de Tocqueville. There is an inscription on the wall of the Association of the Bar of the City of New York, attributed to Harrison Tweed. In substance, it says: "Lawyers are the best people to work with, to play with, and certainly to drink with." I subscribe to these sentiments.

There are more than 400,000 lawyers in our country - far more in relation to population than in any other country. Lawyers have a virtual monopoly on the judicial branch of government. They are influential in making laws as well as enforcing them. They also are the indispensable advisers to leaders in government, business and labor. Through our system of justice, they have the

---

\*de Tocqueville, *Democracy in America*, Vol. I, 1948, p. 276.

primary responsibility for protecting the liberties guaranteed by the bill of rights. Although never ranking high in popularity polls, lawyers occupy a place of influence in our society that is wholly unique.

But we have no divine right to enjoy that place. It is one we must continue to earn by responsible leadership within the profession and as citizens.

First, a word about a lawyer's duty to our system of justice - a system that is in trouble. Although this is not the occasion to catalogue our problems, I will mention the overriding problem - certainly on the civil side. In a word, it is "overload". A 1976 Justice Department study, chaired by then Solicitor General Robert H. Bork, concluded:

"The federal courts now face a crisis of overload, a crisis so serious that it threatens the capacity of the federal system to function as it should. This is not a crisis for the courts alone, it is a crisis for litigants who seek justice, for claims of human rights, for the rule of law, and it is therefore a crisis for the nation."

Attorney General Bell recently repeated phrases we all hear too frequently: he spoke of the "law explosion", and the "crisis in the courts".

The underlying causes are well known. The vast complexity of modern society is the root cause. This results in (1) the enactment by the legislative branch of remedial and complex legislation laws deemed desirable to meet the social needs and technological developments of our



time; and (2) expansive interpretations by the courts, in particularly our Court, that have refurbished rights that lay dormant. Indeed, we have even invented a few new ones.

The litigation resulting from innovative legislation and new court decisions is only a part of the overload problem. The mere example of litigation fosters a desire by others to litigate. Witness the escalation of malpractice suits. And how many new suits will be spawned by the recent \$125 million verdict against Ford Motor Company?

It has been said that "litigation has become the nation's secular religion". Professor Maurice Rosenberg of Columbia has warned of a "virtual epidemic of hair trigger suing".\*

For young lawyers about to enter the practice, this sounds great. Law is the new "growth industry". The slogan of some plaintiff's lawyers is the more "abundant verdict". For defendant's lawyers the cheering thought is more chargeable hours at rates increasing annually.

I could end this talk here, leaving you happy with visions of these "sugar plums". But there are clouds on the horizon. The public will not tolerate lawyer prosperity indefinitely unless the system serves public

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\*Business Week, The Chilling Impact of Litigation, June 6, 1977.

needs. There will be an outcry against those of us responsible for justice, comparable to that we now hear against doctors and hospitals.

Serious delays at every level, in both state and federal courts, already are intolerable in too many jurisdictions. The cost of civil litigation, pushed ever higher by delay, often is beyond the reach of an individual or small business. The making available of legal services to low and middle income persons, at costs they can afford, remains a serious problem - despite considerable effort by the bar.

To be sure, many cases - for example, strike suits designed to coerce a settlement - do not deserve to be litigated. But the consequences of delay and expense also often deny to persons with just causes and meritorious defenses, reasonable access to justice.

Even so, the courts are overloaded;\* the system is not geared to accommodate the load, and the quality of justice is thought by many already to be deteriorating.\*\*

Although lawyers did not create the basic causes of the overload problem, we are by no means free from blame. Lawyers resist the wider use of administrative remedies, and changes in the jurisdiction of the federal

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\*It was recently reported to the Chief Justice that one District in CA5 has a backlog of 900 cases - many of which may never be reached for trial.

\*\*See Address, by Attorney General Bell, Vanderbilt University School of Law, November 4, 1977.

courts. Lawyers are largely responsible for the rules of procedure that are so easily exploited.

Lawyers' fees, difficult to test competitively in the market place, continue to escalate. Whether justified or not legal fees contribute to the burgeoning cost of justice. We also are primarily responsible for the ethical standards of the bar.

\* \* \*

I have mentioned the overload problem, and some of its consequences, to emphasize the duty and responsibility of lawyers. We have the capacity - through bar organizations, the law schools, and working with government - to assure that the system is responsive to legitimate societal demands.

Although few would say that the profession is discharging fully its duty to justice, there is a greater awareness today of the need for responsible leadership than in years past. Indeed, through the organizations of the judiciary and the bar, and the Department of Justice, a great deal is underway. Much that is being done is commendable.

Another, and longer speech, would be required to describe some of the major reforms that now are receiving serious attention. The newly created office for Improvement in the Administration of Justice, headed by your Professor Daniel Meador, is providing innovative leadership - both independently and in close cooperation with professional organizations.



It is thus evident that you will be coming into the profession when the need for change and reform are challenging. Indeed, the need is urgent. For lawyers with a proper sense of their professional responsibility, there will be many opportunities to serve the cause of justice.

If you practice or teach, the best medium for service is through the organized bar. I urge each of you to affiliate with local, state and national bar organizations.

During the early years there will be feelings of some frustration because you will be junior to most of those in leadership positions. But state and national organizations now have "young lawyer" components, and if you serve them with perseverance you will find meaningful things to do.

\* \* \*

I have been talking - obviously in broad terms - about the responsibility of lawyers for the quality of our system of justice. We also have a broader duty to be constructive citizens in the affairs of our communities, states and - in time - our country. Thomas Jefferson once wrote:

"There is a debt of service due from every man to his country, proportioned to the bounties which nature and fortune have measured to him."

Although a lawyer, Jefferson was speaking broadly. He was voicing a conviction widely shared in the decades that witnessed the Revolution, the creation and launching of our country.

It was then accepted as given truth that the educated and the privileged - the planters and lawyers of Virginia and the merchants and lawyers of the northern colonies - provided the leadership. They started as young men serving locally as Justices of the Peace and in other offices; later as members of the House of Burgesses in Virginia, and many moved on to national service.

Most of the leadership in those great years - though by no means all - came from lawyers. de Tocqueville later observed:

"The government of democracy is favorable to the political power of lawyers. When . . . the noble and the prince are excluded from government, lawyers take possession of it . . . since they are the only men of information and sagacity . . ."\*

The French political scientist exaggerated, and even as he was writing in the 1830's, lawyers were being put in their place by the egalitarian ideas of the Jacksonian era. But the essence of the views expressed by Jefferson and de Tocqueville remains valid: every citizen should participate, and - generally - lawyers are better qualified than most.

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\*de Tocqueville, supra, at 275.



Although the more glamorous service may seem to be at the national level, the opportunities most likely to be available are less pretentious, but perhaps no less important. I am thinking, for example, of elective office, and service on boards and commissions of government, at local and state levels.

I emphasize, also, that government service is only one aspect of citizen participation. Without holding office, one can help make the two-party system function as it should. And, in every community, there are the civic, charitable, religious and cultural organizations privately funded and led. These organizations contribute vitally to the quality of American life.

Although establishing and maintaining a deserved reputation as a competent lawyer is a first priority, I urge you to be a participating citizen in the full sense of this term. Most law firms will encourage reasonable participation in citizen activities. Indeed, I would hesitate to affiliate with a firm that was negative or niggardly in this respect.

I do caution against expectation of early leadership roles. Career advancement - and community and even professional recognition - may come more slowly than you expect. But you can be reasonably sure that the long road of a legal career offers both the opportunity for professional success and gratifying service to society.

Lawyers, by training and aptitude, tend to become leaders wherever they participate.

A few years ago, the retiring President of the Virginia Bar Association - a lawyer who had attained many distinctions in his long career - concluded his annual address by saying: "being a lawyer is the greatest honor of my life."

I am not disposed to disagree with that judgment.

\* \* \*

Now a personal postscript: I pay tribute to Jay Wilkinson, John Jeffries, David Boyd, Phil Jordan and Charlie Ames - clearly among the ablest of all clerks who have served at the Court during my six Terms. They also are my friends. I look forward next Term to having Paul Stephan.

But I don't want you at Virginia to think you have a lien on the Powell Chambers. After all, I am a W&L man.

I nevertheless thank warmly this famous law school and its dedicated faculty for sending me these well-taught young lawyers.

U Va Speech

January 9, 1978

Dear Bert:

Jo and I enjoyed so much our evening with you and Bill Spann. It was reminiscent of the stimulating days that we worked so closely together.

I have agreed to make a talk at the Law Review Banquet at Virginia on February 25. It has been suggested that I talk about some of the problems of the judicial system that most directly affect the public. I suppose the two problems that immediately come to mind are the delays in the system and the cost, especially of litigation.

If there are recent ABA studies or reports addressing these or related problems, I would appreciate your having copies sent to me. Since the screening out of material takes time that I do not have, perhaps someone on your staff could be selective with the view of sending me only what is thought to be best.

I know that Jo would join me in thanking you for a most delightful evening.

As ever,

Bert H. Early, Esquire  
American Bar Association  
1155 East 60th Street  
Chicago, Illinois 60637

lfp/ss



VIRGINIA LAW REVIEW ASSOCIATION

UNIVERSITY OF VIRGINIA SCHOOL OF LAW

CHARLOTTESVILLE, VIRGINIA 22901

(804) 924-3079

JAN 27 1978  
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EDITOR-IN-CHIEF

January 24, 1978

The Honorable Lewis F. Powell, Jr.  
Associate Justice  
United States Supreme Court  
Washington, D. C.

Dear Justice Powell:

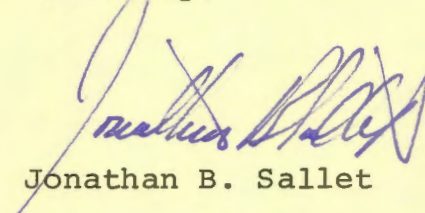
We are currently finalizing our plans for the Law Review banquet on February 25th. Our schedule for the evening includes a cocktail party in the West Oval Room of the Rotunda from 6-8 p.m. and dinner in the Dome Room from 8-10:30 p.m. If you and Mrs. Powell would like to attend the cocktail party for an hour or so, we can arrange to have a room in the Rotunda reserved for you to rest and go over your speech from 7:30-8 p.m.

Professor Wilkinson has accepted our invitation to introduce you at the banquet. Dean Spies and I will speak briefly prior to his introduction. We, of course, invite you to speak on any topic you wish. I will contact you in a few weeks to find out the title of your speech so that it can be included in our dinner program.

We have arranged for accommodations at the Boar's Head for you and Mrs. Powell for Saturday night. We will be happy to make any other arrangements that you wish to make your visit more comfortable.

I look forward to seeing you and Mrs. Powell at the banquet.

Sincerely,



Jonathan B. Sallet

Trip to Va

JOINT COMMITTEE ON CONTINUING LEGAL EDUCATION  
of the  
VIRGINIA STATE BAR  
and  
THE VIRGINIA BAR ASSOCIATION  
School of Law, University of Virginia  
Charlottesville, Virginia 22901  
(804) 924-3416

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FEB 21 1978

February 16, 1978

Honorable Lewis F. Powell, Jr.  
The Supreme Court of the United States  
1 First Street, N. E.  
Washington, D. C. 20543

Dear Mr. Justice Powell:

We are delighted that you will be here for the Law Review banquet. I look forward to seeing you there, and I hope there will be some occasion during your visit to talk to you about the problems of the legal profession.

In this regard, I hope you won't mind if I pose to you a question that occurred to me while reading about the controversy raised by Chief Justice Burger's comments concerning the competence of trial lawyers. No one has suggested that inherent in his criticism of trial lawyers is a rather serious criticism of judges. As you know, DR 6-101 states that a lawyer should not attempt to handle a matter without adequate preparation, or one he is not competent to handle, or neglect a matter entrusted to him. I assume that if a trial lawyer handles a case incompetently he has violated this disciplinary rule. DR 1-103 (A) states that a lawyer possessing unprivileged knowledge of a violation of the Code shall report such knowledge to an authority empowered to investigate or act upon such violation. Since a judge is also a lawyer, isn't he violating the Code of Professional Responsibility if he knows a lawyer has violated Canon 6 and fails to report him?

Even if it is determined that a judge does not have an ethical obligation to report lawyer incompetence, it seems to me that judges ought to be urged to be more active in exercising their authority over trial lawyers as officers of the court. No matter what prerequisites may be established for trial lawyers, they will not prevent the lazy or overworked lawyer from failing to prepare adequately for the trial of a case. This seems to be the major deficiency, and only the judge can get at this problem.

I do not have any strong objections to making trial practice a legal specialty with prerequisites. In fact, it might be an interesting experiment to see if the legal profession can, in a piecemeal way, develop specialties similar to the medical profession. But it

Trip

Honorable Lewis F. Powell, Jr.

Page 2

February 16, 1978

seems to me that the proposal is somewhat similar to the proposal for mandatory continuing legal education - we would rather subject all lawyers to various educational requirements, and spend large sums of money doing so, rather than identifying and dealing with the small percentage of lawyers who are incompetent.

Looking forward to seeing you --

Sincerely yours,

  
Peter C. Manson

PCM:ig



*Kopf*

February 27, 1978

Dear Jon:

We had an uneventful trip back to Washington Sunday morning, bringing with us pleasant memories of a most interesting visit with the Law Review members and their friends.

Apart from my own participation (which one cannot judge for himself), I thought the banquet Saturday evening was a warm and memorable occasion. You were a fine master of ceremonies, Dean Spies maintained the light-hearted spirit that you initiated, and Jay Wilkinson was attractive as always (at least, up to the point where he talked seriously about me). The faculty and Law Reveiw members present, with spouses and guests, were responsive and appreciative.

There was a general recognition that the Law Review, under your leadership, has had an exceptionally fine year.

My wife Jo and I particularly enjoyed the informal gathering in your home.

In sum, we send you congratulations and also our appreciation.

Sincerely,

Mr. Jonathan B. Sallet  
Editor-in-Chief  
Virginia Law Review Association  
Charlottesville, Virginia 22901

lfp/ss

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February 27, 1978

Dear Jay:

I write to say again, a little more formally, how much I appreciate your introduction of me Saturday evening.

It was clever and humorous (typical Wilkinson style) up to the point where you began seriously to talk about my role on the Court. Everyone present was delighted, at least to that point.

I know that our friendship, like that between your father and me, is so rooted in years of understanding, toleration and mutual respect, that you are inclined to be far more generous in an appraisal than the facts ever would justify. Also, we all tend to indulge in a certain amount of hyperbole on sentimental occasions such as the Law Review banquet. Nevertheless, I want you to know that I do deeply appreciate what you said.

Indeed, if you still have your notes and would send me a xerox copy, I will certainly keep them in my limited archives - together with a copy of this letter to make clear that I understand the generosity that prompted what you said.

Jo and I also appreciate the invitation to breakfast Sunday that you and Lossie so thoughtfully extended. With argument of 12 cases set for this week, and also with a fourth draft of an opinion that has been giving me difficulty in my brief case, I was anxious to get back to Washington early on Sunday. We look forward to meeting Nelson on another occasion when we will have time to enjoy him.

Affectionate best to you both.

As ever,

Prof. J. Harvie Wilkinson, III  
School of Law  
University of Virginia  
Charlottesville, Virginia 22901

lfp/ss



604

February 27, 1978

Dear Jon:

We had an uneventful trip back to Washington Sunday morning, bringing with us warm memories of a most interesting visit with the Law Review members and their friends.

Apart from my own participation (which one cannot judge for himself), I thought the banquet Saturday evening was a warm and memorable occasion. You were a fine master of ceremonies, Dean Spies maintained the light-hearted spirit that you initiated and Jay Wilkinson was clever and attractive - as always (at least, up to the point where he talked seriously about me). The faculty and Law Review members present, with spouses and guests, were responsive and appreciative.

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Sincerely,

Mr. Jonathan B. Sallet  
Editor-in-Chief  
Virginia Law Review Association  
Charlottesville, Virginia 22901

lfp/ss



P.S. Our accommodations at the Boar's Head Inn were excellent, and we brought the lovely flowers back to Washington with us. I understand that Richard Parrino was responsible for all of this. Please give him our special thanks.

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UNIVERSITY OF VIRGINIA SCHOOL OF LAW

CHARLOTTESVILLE, VIRGINIA 22901

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EDITOR-IN-CHIEF

February 27, 1978

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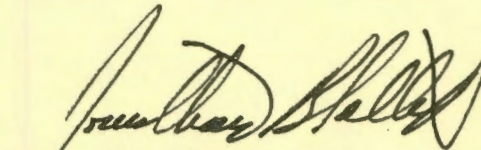
The Honorable Lewis F. Powell, Jr.  
Associate Justice  
Supreme Court of the United States  
Washington, D. C. 20543

Dear Justice Powell:

We are all very grateful that you and Mrs. Powell were able to visit Charlottesville this past weekend to attend our annual banquet. I know everyone on the Review and the attending faculty was pleased to have the opportunity to meet you and Mrs. Powell. All of us enjoyed your speech, which I thought was very appropriate for all of us who are about to leave law school's safe harbor.

Again, with thanks, I remain

Respectfully yours,



Jonathan B. Sallet  
Editor-in-Chief



*Orison Marden*

March 13, 1978

Dear Mark:

This refers to the address that I have agreed to make at The Bar Association of the City of New York in October, as the first Orison Marden Lecture on professional responsibility.

I enclose a copy of the text that I prepared for a talk at the Law Review Banquet at the University of Virginia a couple of weeks ago. I did not use the text in this form, although I did use it as the basis. My stated subject was "The Lawyer as a Citizen", but my talk was built around two concepts: (i) the responsibility of a lawyer to his profession and to the system of justice, and (ii) his responsibility generally as a citizen who has a special competency for service by virtue of his training.

My present plan is to develop a talk for the Marden Lecture on the first of these concepts. When we last talked about this, you suggested that perhaps one of the Judicial Fellows - I think you mentioned Judy Churlin - could be helpful if I narrowed the scope of my initial inquiry and gave some guidance. As my thinking has now crystalized, I write to inquire whether it would be convenient for Judy (or whomever you designate) to spend a few days building more substance into my talk than is presently contained in the University of Virginia draft. I am thinking only of the professional responsibility segment of the speech, and particularly of the current movement for major reform. Lawyers have a duty and major responsibility to participate in this movement. There is a better climate for this now than I have seen in some years. We not only have the impetus of the Pound Conference (in which you played a major role), and the increased activity of the American Bar Association, but the new division of the Department of Justice under Dan Meador is providing constructive leadership.



I would like to expand my Virginia talk to identify, and discuss briefly, perhaps five or six of the most urgently needed areas of reform (e.g., discovery, class actions, exhaustion of administrative remedies, measures to reduce the cost of litigation, improved access to justice on the part of middle income citizens, etc.) This is a time when lawyers should be less concerned with their private interests, and personal prosperity, than with making sure that the system is made responsive to societal needs. Perhaps the two most disturbing aspects of our present judicial system on the civil side are (i) excessive delay, and (ii) costs - attorneys' fees, printing, etc. - beyond the means of the average citizen. These, of course, are closely related.

In sum, it would be helpful for someone of Judy's experience and ability to expand the professional responsibility component of my U.Va. speech into an essay of perhaps 4500 to 5000 words. I would, of course, then edit and revise - as one always does. The basic draft would be one for publication, which I would condense to about 3500 words for verbal delivery.

I would not need the end product until the Court adjourns for the summer.

Sincerely,

Dr. Mark W. Cannon

lfp/ss

VIRGINIA LAW REVIEW ASSOCIATION

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CHARLOTTESVILLE, VIRGINIA 22901

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*Accepted*

EDITOR-IN-CHIEF

JUN 6 1977

June 2, 1977

The Honorable Lewis F. Powell, Jr.  
Associate Justice  
Supreme Court of the United States  
Washington, D. C. 20543

Dear Justice Powell:

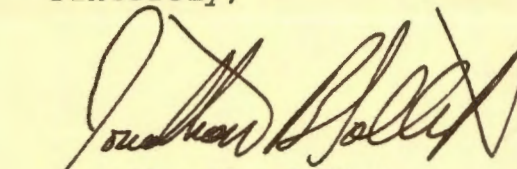
On behalf of the Virginia Law Review, I would like to invite you to be our honored guest and featured speaker at the Review's 56th annual banquet. We plan to hold the banquet Saturday, February 25th at 8:00 p.m. in the Rotunda of the University of Virginia.

As one who has addressed our banquet in the past, you know that we gather annually to honor the Review and particularly the outgoing members of the Managing Board. All of us would be particularly pleased if you could join us in that celebration.

Should you decide to accept our invitation, we will be happy to arrange overnight accommodations in Charlottesville for you and Mrs. Powell, whom we hope can attend with you.

I look forward to hearing from you.

Sincerely,

  
Jonathan B. Sallet  
Editor-in-Chief