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# THE LEWIS F. POWELL, JR. ARCHIVES\* AND THE CONTEMPORARY RESEARCHER

JOHN N. JACOB\*\*

When I was asked this past summer to speak, as archivist in charge of the Lewis F. Powell, Jr. Papers, on the specific research value of those papers, I replied that I would be prepared to do so in about three years. No Powell papers were at Washington and Lee University when this request was made. The majority of the papers were held at the University of Virginia Law Library, while others remained in the Supreme Court building pending the completion of construction of the Powell wing.

While it would take years of working in the papers to learn the strengths and weaknesses of specific areas of documentation, no one would deny the evident value of these papers to anyone researching Justice Powell's career, the Supreme Court during his tenure generally, or specific decisions from that time. Other obvious topics of research include the recent history of the American Bar Association; massive resistance to school integration and the desegregation of the Richmond public schools; and the legal services movement of the 1960's. Other subjects that will, no doubt, draw researchers include: Military intelligence and cryptanalysis during World War II; the Richmond Charter Commission; the Virginia Commission on Constitutional Revision; the American College of Trial Lawyers and the American Bar Foundation; the President's Commission on Law Enforcement and Administration of Justice; the President's Blue Ribbon Panel to Study the Defense Department; and the American Chamber of Commerce and the "attack on American free enterprise system" memo written by Powell in 1971. The list could go on. No one doing a biographical work of any of Powell's contemporaries on the Supreme Court will fail to inquire about these papers. Anyone doing work on any of Justice Powell's many distinguished and celebrated friends—Edward R. Murrow comes immediately to mind—will want access to Powell's correspondence. Historians of the law firm of Hunton & Williams will most certainly make use of this resource.<sup>1</sup>

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\* In the title and the text of this article, I am using the term "archives" in a broad sense to refer to all special collections material and activities documenting and memorializing Powell at the Washington and Lee University School of Law. The reader should be aware, however, that in narrower terms, "archives" are the "noncurrent records of an organization or institution preserved because of their continuing value." "Manuscripts" by contrast, are "bodies or groups of personal papers." Frank B. Evans et al., *A Basic Glossary for Archivists, Manuscript Curators, and Records Managers*, 37 AM. ARCHIVIST 415, 417, 426 (1974). Thus when speaking only of the papers received from Powell, I am talking about a manuscript collection—about the Papers of Lewis F. Powell, Jr.

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1. My knowledge of the contents of the Powell Papers is based on two inventories.

You surely must realize now, if you did not before I enumerated these highlights, that while the Powell Papers have found a home in a law school, legal scholars and historians will not be the only users and beneficiaries of this collection. They may, in fact, not even constitute a majority of the researchers. In a paper he delivered at the Society of American Archivists meeting in Philadelphia in 1991, David DeLorenzo, an archivist at the Harvard Law Library, detailed use, during the years 1967 to 1990, of the collections of personal papers held by that library. He found that most users were from outside Massachusetts, that a small percentage of them were legal scholars, and that the uses made of the collections varied widely.<sup>2</sup>

Considering for the moment only Powell's leadership of the Richmond School Board, one can quickly make a list of possible users of this collection. As you recall, Powell led the School Board members on a circuitous route around the Virginia General Assembly—and the Byrd Machine—in order to comply with federal integration orders. His efforts kept Richmond schools open when those in such places as Charlottesville, Norfolk, and Warren County were closed for several months. Just as importantly, Powell, along with his friend J. Harvie Wilkinson, Jr., railway executive Stuart Saunders and publisher Frank Batten, formed a committee of business leaders who successfully opposed massive resistance.<sup>3</sup> Of course, anyone from the legal community studying the crisis at the federal level that precipitated this conflict between the United States and Commonwealth of Virginia will wish to use these papers. So will biographers, not only of Powell and Wilkinson—whose biographers may well come from the legal world—but those of Batten, Saunders, Byrd, and many others. These biographers may be historians—trained or self-styled—or people who consider themselves to be primarily writers of nonfiction for general audiences. We should also add to our list social historians of the 1950's; chroniclers of Virginia and national African-American history; scholars of Richmond local history; and students, from elementary school to graduate school, looking for primary accounts of events from these crucial times for a report or a thesis.

Some of these researchers will find a rich lode and remain in residence here for days or weeks. Others will have done much of their work in other resources, and will hope to find one document—even one phrase from a letter—that will bolster their argument, corroborate their evidence, or send

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The first, an inventory of his papers prior to joining the Supreme Court, was prepared by the Virginia Historical Society, where these papers were deposited as a closed collection for a number of years. The second is a listing of his Supreme Court papers, which was prepared by his long-time secretary Sally Smith. My familiarity with the papers was enhanced by personal inspection of the papers during several visits to the University of Virginia Law Library, frequent discussions and correspondence with Marsha Trimble, archivist of the University of Virginia Law Library, and two luncheon conversations with Justice Powell.

2. David L. DeLorenzo, *A Judgment Not Withstanding the Verdict: Use and Users of a Legal History Repository* (Sept. 28, 1991) (unpublished manuscript, presented at the Society of American Archivists Annual Meeting).

3. See ANNE H. FREEMAN, *THE STYLE OF A LAW FIRM* 166 (1989) (describing Powell's efforts in opposition to massive resistance).

them to yet other resources in a distant repository. Still others will go away empty-handed and disappointed.

Such is the business of modern research. It is multidisciplinary, eclectic, and constantly evolving. It is precisely these conditions that make lawyers' papers so interesting to contemporary researchers. Because the work of lawyers has always touched so many facets of the life of society and the lives of individuals, the personal and professional record that lawyers leave behind is of interest to those researching a wide variety of aspects of our society and the relationships that exist between them. Those of you in the legal profession know of the significance of the primary sources of law—of black-letter law, the stuff of the law. Sources like the Powell Papers are the primary sources of history—the stuff of history.

But let me stop here in my celebration of the richness of a collection with which I have as yet only a nodding acquaintance. Most of you gathered here today know of the principal activities and concerns of Justice Powell. It would be even more presumptuous of me to speak to you of the virtues of the man himself. I will, however, point out the striking parallel that I have found between General of the Army George C. Marshall—the man whose papers brought me to the Great Valley of Virginia now almost fifteen years ago—and Lewis F. Powell, Jr. Both were young men of promise when their experiences at Lexington institutions of higher learning shaped the manner in which they would conduct themselves throughout their careers. Both worked tirelessly and largely in obscurity—at least from a national perspective—in their chosen professions for much of their careers, and both were raised to positions of national prominence after it seemed such callings had passed them by. Both distinguished themselves when the opportunity arose for them to serve their country in the highest capacity of their respective professions.<sup>4</sup> What is most remarkable to me—and perhaps to most of my generation hardened to scandals and downfalls of public persons—is that both men were considered to be of almost flawless character while they held their highest positions, and these judgments have not been altered by the passage of time.

Just as I watched for years as a certain few researchers—and I use the term loosely here—“proved” that General Marshall knew about the forthcoming attack at Pearl Harbor and attempted to demonstrate how he gave China to the Communists, there may well be those of the same ilk trying to show how Justice Powell was first a traitor to the South after *Brown v. Board of Education*, and then a traitor toward political conservatives while serving on the highest Court. Let us not make the mistake of trying to defend Justice Powell by keeping too tight a hold on his papers. Let us provide access on an equal basis to all researchers. Not only is it important to our society to maintain the free flow of information which is its life blood, it is important to my morale to deal with some outrageousness on

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4. See *id.* at 144-169 (describing Marshall's time at the Virginia Military Institute); FORREST C. POGUE, *GEORGE C. MARSHALL: EDUCATION OF A GENERAL, 1880-1939* (1962).

the part of researchers, if I do not find it in the papers with which I am working. I don't recall the last time that I came across an illicit love letter or financial impropriety in the line of duty, and my current assignment looks no more promising!

I have already commented at length on the evolution toward increased interrelatedness in modern research. (Those attorneys present here today who find themselves using Nexis as often as they use the Lexis service, or making ever increasing use of Dialog databases through the Westlaw service, know something of this interrelatedness). I now would like to discuss trends in the world of archives that must be couched in terms of revolution—what one commentator has referred to as a reexamination of “the nature of the cultural document itself and its connections to social action.”<sup>5</sup> As Hugh Taylor has so eruditely put it,

Automation, despite the limitations of its language, ushers its users into a world of increasing personal choice as they develop patterns of command over constantly changing configurations of data. . . . We archivists now grope about in the world of Sherlock Holmes's dog that didn't bark, where the comfortable old connections and relationships between sources of information no longer exist, where—like the great detective—we must rid ourselves of preconceived approaches and assumptions if we are to avoid the blindness of bureaucratic experience.<sup>6</sup>

Some of the most basic and cherished archival concepts have come under skeptical examination, if not outright attack, in light of recent changes in the way information is gathered and disseminated. Until quite recently, it was axiomatic that archivists identified the broadest, most complete record extant within their collecting area, and that they collected this material in the archives, where it was described as completely as possible and permanently preserved for use by scholarly researchers. Virtually every concept expressed in the previous sentence is now being questioned by the archival world.<sup>7</sup>

Let me briefly examine only the area of building collections of personal papers. (There is not time to discuss whether it is necessary to have physical custody of materials in order to exercise administrative control; whether the idea of permanence has any meaning in modern archival administration; how to best describe and retrieve materials in an environment of integrated computer systems; and whether we really know who our users are, let alone what information they are really seeking.) In undertaking studies of what it is that they are trying to do in building collections, archivists found that

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5. David Bearman, *Archival Methods*, ARCHIVAL AND MUSEUM INFORMATICS TECHNICAL REPORT, Spring 1989, at 67.

6. Hugh Taylor, *'My Very Act and Deed': Some Reflections on the Textual Records in the Conduct of Affairs*, 51 THE AMERICAN ARCHIVIST 465-466 (1988).

7. See Bearman, *supra* note 5, at 3.

if hundreds of new archives were established, thousands greatly expanded, and tens of thousands of additional archivists employed, we would still not come within an order of magnitude of being able to collect, store, and make available for research a representative, never mind complete, record of the "significant aspects of our culture," however one might define that phrase.<sup>8</sup>

Other researchers have gone further and asked whether, if we were able to build such collections, the collections really would be desirable. Would it be worth the enormous costs to society? (Ask Dean Bezanson about the costs involved with this single collection.) The distinguished Canadian archivist, Hugh Taylor, whom I quoted earlier, has turned another justification for collecting on a universal scale—not being able to predict future researchers' needs—on its head and asked, "Will the postliterate, postindustrial society place the same value as archivists on the vast accumulation of records, most of which are already self-destructing?"<sup>9</sup>

One solution to this dilemma is offered by the powerful and compelling voice of David Bearman, editor of *Archives and Museum Informatics*, who states that the if archivists are to survive as a distinctive profession among all of today's information specialists, they must become "not simply custodians of our recorded past, but shapers of the cultural memory."<sup>10</sup> This is laudable but brings two immediate problems to mind: 1) Will society recognize the authority of archivists in this self-appointed role?; and 2) Are archivists properly prepared to do this work? More likely to succeed, I think, are efforts made in this role by the re-established old alliances of librarians, records managers, historians, and museum curators. New alliances must be forged as well with data processors, and other information specialists who deal with machine-readable records.

Another arresting idea of Mr. Bearman's, strongly tied to the one already cited, involves archivists "removing unconvincing references to our role in preserving evidence for posterity, and replacing them with our role in focusing and connecting the past and the present."<sup>11</sup> And this brings me back, lest you thought I had forgotten, to the Powell Archives. How does this most traditional archival program fit into this new information age?

Of course, the Powell Papers will be preserved and made available to traditional scholarly researchers. But in order to be fully utilized and to give the best contemporary curatorship to the Powell archives, the archives must be made an integrated link in the university's information resources, as well as in national and international legal resources. In other words, we must use the new on-line bibliographic system (which has recently replaced the traditional card catalogs) and the other technological tools at our disposal to make those who can use information contained in the Powell Papers

8. *Id.*

9. Taylor, *supra* note 6, at 467.

10. Bearman, *supra* note 5, at 1.

11. *Id.* at 67.

aware of its existence, and increasingly, to deliver that information to them wherever they may be.

To borrow again from an idea of David Bearman's that is especially apt for starting a program like the Powell archives, we need to develop mechanisms for outreach which go beyond accepting users to actively demanding users' involvement.<sup>12</sup> Conversely, the rare gift that this program represents—only six other law schools in the United States have programs involving trained archival personnel<sup>13</sup>—demands the involvement of the Powell Archives in wider concerns. The School of Law must not merely add the curatorship of these papers to the other duties of the Law Library if this is to be a fitting tribute to spirit of public service that has informed Justice Powell's career. Rather, I envision a dynamic program like that of the Law Center and the clinical programs which are so much a part of this law school.

I would propose that the Powell Center program strive to meet three primary goals:

- 1) To promote the ideals that have informed Justice Powell's life and career, including, but not limited to public service and the delivery of legal services to people of all strata of society. This could be done in cooperation with the Law Center and the clinical programs.
- 2) To facilitate research on Justice Powell's life, career, and times.
- 3) To support and conduct research on questions concerning the preservation and accessibility of judicial and legal papers and records. This would include tackling such thorny issues as attorney-client privilege and other kinds of confidentiality relating to the final disposition of lawyers' papers, and dealing with the overwhelming amount of legal records in today's society, including electronic records, which present a new world of concerns. If, for example, public policy concerning court records or records of law firms needs to be established or revised, let the Powell archival program be among those programs working toward solutions. If assistance is needed by the several other law school libraries that collect manuscripts, but do not have archivists on their staff,<sup>14</sup> let us do what we reasonably can to assist. If research in legal history would be facilitated by the electronic networking of those institutions who hold such materials, let the Powell Archives be a leading participant.

Law schools that have heretofore not been involved in collecting materials concerning the history of the law and lawyers no longer have to

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12. *Id.*

13. Marsha Trimble, *Archives and Manuscripts: New Collecting Areas for Law Libraries*, 83 LAW LIBRARY JOURNAL 449 (1991).

14. *Id.* at 435.

choose among the alternatives of having the fiscal, physical, and personnel resources to engage in a traditional large scale program, accepting one or two collections out of political expediency and having no other relationship with the broader world of historical research, or ignoring this vital area of resources altogether. The problems created by the "information overload" actually offer the opportunity for many law schools, in the necessary re-examination of the kinds of information they will provide and the way in which they will deliver it, to become involved in the collecting of manuscript and archives materials at a variety of levels of commitment and intensity, and to do so in a way that will benefit not only their own institutions, but the larger world of contemporary legal research.

In the case of this law school, taking on this new responsibility may be a departure, just as taking a stand against the prevailing beliefs of the culture which nourished him was a departure for Lewis F. Powell, Jr. This archival program will be a new experience for the this school, just as accepting a Supreme Court appointment was a new experience for the life-long attorney. Let us hope that we meet these challenges half as well as did Justice Powell.



