

# MINUTES OF THE 61ST ANNUAL MEETING

President John A. C. Keith called the General Session of the 61st Annual Meeting of the Virginia State Bar to order at 9:00 a.m. on June 19, 1999. He introduced W. Scott Street, III, incoming president, who had been sworn in by Virginia Supreme Court Justice A. Christian Compton at the banquet the evening before.

## Report of Council Actions

Mr. Street reported that Council had taken the following actions at its meeting on June 19:

1. Approved amendments recommended by the Committee on Lawyer Discipline to a) increase to \$3,500 the bond required of a person seeking reinstatement after being disbarred; b) permit the Disciplinary Board in reinstatement cases to conduct a criminal record check, increase publicity on the filing of the petition, and allow the board to condition its recommendation for approval of reinstatement on the petitioner obtaining malpractice insurance and/or a bond.
2. Approved and recommended to the Supreme Court of Virginia Legal Ethics Opinion 1723 holding that absent informed consent by an insured party, the lawyer cannot provide billing records and other information to an outside auditor at the request of the insurance carrier.
3. Voted to advise the Court that the bar still feels that UPL Opinion #183 regarding real estate closings remains viable, and should be modified to take into account recent legislation that enables lay settlement agents to close any type of real estate transaction.
4. Received a report from the Mandatory Continuing Legal Education Board recommending a fee for members who do not complete their MCLE requirements by June 30 and increasing the reinstatement fee for attorneys who are repeatedly suspended for non-compliance.
5. Adopted the 1999-2000 budget. Dues will remain at \$169 for active members in 1999-2000.

## Election of President-elect Condo

Mr. Street introduced Joseph A. Condo of Vienna who was unopposed in the contest for president-elect. Mr. Condo was duly elected, and thanked bar members for their confidence and for the opportunity to serve.

## Tradition of Excellence Award

Mr. Keith presented the recipient of the 1999 Tradition of Excellence Award: Eric V. Zimmerman of Leesburg. The General Practice Section gives the award each year to a lawyer who exemplifies public service.

## Fifty Year Awards

Mr. Keith and Mr. Street presented Fifty Year Certificates to all of the honorees who were present for the occasion. They were photographed as they received this special recognition for their service. The entire group was then photographed for the *Virginia Lawyer*.

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### **Resolution Honoring Justice Lewis F. Powell, Jr.**

Judge Robert R. Merhige, Jr. presented a resolution in honor of U.S. Supreme Court Justice Lewis F. Powell, Jr. Justice Powell had served his city, his state, and his country as well as his profession with dignity. The resolution was unanimously adopted.

The meeting was adjourned at 9:40 a.m.

### **RESOLUTION OF THE VIRGINIA STATE BAR TO RECORD OUR RESPECT AND AFFECTION FOR JUSTICE LEWIS F. POWELL, JR.**

Lewis F. Powell, Jr., a member of this Association, served on the Supreme Court of the United States from January 7, 1972, until June 26, 1987.

Justice Powell received both his undergraduate and law degrees from Washington and Lee University, followed by enrollment in Harvard Law School. The Justice practiced law in Richmond, Virginia, for a brief time with the firm of Christian, Barton & Parker, followed by more than 40 years at the now designated firm of Hunton & Williams, interrupted only by his voluntary enlistment in the Intelligence Branch of the Army Air Force where he served until the end of World War II. It is to be noted that he was the twelfth attorney in the firm at which he practiced the majority of his life. The contribution to that firm during his service as an attorney at law is fairly reflected by its growth from one of twelve lawyers to one of the largest firms in the country.

Upon his return to the practice of law, Justice Powell found the time not only to serve his chosen profession, but to voluntarily participate in a number of charitable organizations and, in addition, served as Chairman of the Richmond School Board. During that period of his life, coupled with his service as a volunteer in a number of local organizations dedicated to the betterment of the community, he was highly engaged in the building of the Hunton and Williams law firm.

Justice Powell's contribution to our profession included service as President of the American Bar Association, where he led the way in reforming our profession's then Canons of Ethics leading to the Code of Professional Responsibility adopted by the American Bar Association in 1969.

His tenure as President of the American Bar Association encompassed a successful effort on his part to expand legal services for the indigent. Indeed, Professor Jeffries of the University of Virginia Law School faculty suggests Justice Powell's effort in this regard was his "most notable accomplishment as President of the ABA . . ." <sup>1</sup> It is interesting to note that the Justice efforts in that regard continued after his term as President of the ABA and today, more than three decades following his term of office, law firms numbered in the thousands have established programs to participate in affording free legal assistance to the needy.

On January 7, 1972, he was sworn in as our country's 99th Justice of the Supreme Court of the United States. He was, at the time, 63 years of age and had agreed to accept the appointment only after having, at least twice before, declined. His acceptance came only after being told by the President of the United States that it was his duty.

But for the swift, unrestrained and inevitable passage of time, our profession and the country may well have been deprived of the services of Lewis F. Powell, Jr., as a Justice of the United States Supreme Court. John Jeffries, who had served as a law clerk for the Justice, tells us in his book entitled, *Justice Lewis F. Powell, Jr.*, of a statement the Justice addressed to his sister, Eleanor, only minutes before being sworn in that "had he been able to consider the President's request of him to serve over another 24 hours, he would not have accepted the appointment."

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Indeed, the fact that Justice Powell was not afforded the 24 hours to which he made reference has made the date of January 7, 1972 the date on which he was sworn in as an Associate Justice of the Supreme Court of the United States, a day worthy of celebration by every member of the legal profession, and especially those of this esteemed Bar Association.

Justice Powell was the embodiment of the finest personal and professional qualities. He was truly a man with an acute sense of justice, insight and compassion. He had a particular knack for organizing, explaining and citing the creation of fine legal products. His service as a Justice exemplified his independence, tempered by an obvious respect for tradition, history and protocol.

The Justice represented a monument of strength and dedication to the legal profession. His life, in every aspect, exemplified service and dedication.

The principles exercised by the Justice in his judicial pronouncements are truly applications of the principles that enunciated those brilliant and dedicated jewels that were responsible for the ratification of our Constitution. The Justice evidenced a keen respect for those issues which the Constitution had reserved for legislators as distinguished from courts.

Justice Powell's opinions evidenced an understanding of the view expressed by Benjamin Franklin, who, when asked what the convention which had convened in Philadelphia had accomplished, replied, "A republic, if you can keep it." If the writers hereof are correct in their assumption, then it would appear to be equally as correct to say on behalf of this Association, that Lewis Powell, Jr., indeed contributed mightily, not only to the keeping, but to the strengthening of the principles which have made our country a true constitutional republic. For this each of us are indebted.

Though reluctant to be the center of attention, the record indicates that the Justice in that period of time in our history shortly after Brown v. Board of Education, 349 U.S. 294, 301 (1954) mandated desegregation of our schools to begin "with all deliberate speed," endeavored to discourage the utilization of the tactic of "massive resistance" advocated by many political leaders.

The Justice's ascension to the highest bench in our judicial system failed to reduce and, indeed, if anything increased his already heavy work schedule. Justice Powell was noted for engaging in a 6-day a week work schedule which continued even after his retirement as an active Justice.

During his tenure on the Court, Justice Powell was the principal author of more than 270 opinions, concurring in 225, and expressing a dissent in more than 150 opinions. Though Justice Powell participated in cases involving literally every aspect of the law, the Justice is perhaps best known for his participation in the case of Regents of the University of California v. Bakke, 438 U.S. 265 (1978). Bakke was described by him as presenting a "challenge to the special admissions program of the Petitioner, a medical school of the University of California at Davis, which is designed to assure the admission of a specified number of students from certain minority groups."

Professor Jeffries characterizes the Justice as a:

"majority of one" to tolerate racial preferences in higher education, but only as a temporary and contested deviation from the ideal of color-blindness . . . Four Justices were prepared to allow minority preferences more or less without limitation, and four others interpreted a federal statute to disallow minority preferences more or less without exception. Powell cast the deciding vote in both directions. On the one hand, he thought it necessary that affirmative steps be permitted to overcome America's long history of racial oppression. On the other hand, he feared the entrenchment of a racial and ethnic spoils system that would prove permanently durable and socially divisive. Faced with these conflicting concerns, Powell characteristically sought a middle course. He tried to permit racial preferences without conceding their future, to authorize such preferences while preserving the grounds of objection to them. In short, Powell sought both to allow and to curtail racial preferences.<sup>2</sup>

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Justice Powell was truly a man for all seasons. He may best be described as a fine human being with an acute sense of justice, insight and compassion, yet it would appear that with his sense of compassion, he did not hesitate to go by the book, so to speak, when the occasion demanded it.

Any tribute or discussion of Justice Powell would be incomplete without mention of his strikingly beautiful wife, Josephine. Mrs. Powell was, indeed, a sparkling tribute to the Justice's good judgment as to beauty, character, love and companionship. She was, as described by her son, the Justice's "hope, his inspiration and his passion."

It was on July 15, 1931, that Justice Powell became a member of this Association and commenced, through his service as an attorney at law, to give life to the fact that ours indeed is a profession of service. The life of Justice Lewis F. Powell, Jr., stands as a monument not only to all who are dedicated to the principles expressed in the Constitution of the United States, but because his life and dedication to the law has sharpened our own sense of duty and devotion to our country and to our profession.

Wherefore, we respectfully move, as members of the Virginia State Bar, that this tribute, evidencing the admiration and respect of this Association for Justice Lewis F. Powell, Jr., be inscribed on the permanent records of this Association.

Respectfully submitted,  
Robert R. Merhige, Jr.  
W. Taylor Reveley, III

### Endnotes:

- 1 Resolution of the Bar of the Supreme Court of the United States authored by John C. Jeffries, Jr., Emerson G. Spies, Professor of Law and Associate Dean, University of Virginia.
- 2 See Resolution of the Bar of the Supreme Court of the United States, authored by John C. Jeffries, Jr.