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IN MEMORIAM

WRITING FOR JUSTICE POWELL

*Anne M. Coughlin**

Probably, this business of tribute-writing is always difficult. By definition, the subject is a person who was much admired and beloved, and we must struggle to find the right rhetorical stuff in which to trace his visage and awaken his spirit, to evoke for our readers an understanding of who he was and of his place in their history. For me—and with Lewis Powell as my subject—the business seems especially difficult. For one thing, my own obsession with words, with getting the writing just right, began to assume its current, massive proportions during the time that I spent writing for and as him. Of course, for Justice Powell, getting the job *done* came first. The clerks just had to face it (or face Himself, as Justice Powell's secretary, Sally Smith, liked to call him): For Justice Powell, timeliness was (almost) everything. How could it not be? Justice Powell's life was one of order in the fullest and best sense of that word, by which I mean it was a deeply ethical life, whose owner knew that some things, such as serving one's country, community, and family, always must be done before other things, such as indulging the narrow pleasures and cares of the self. Besides, you do not become head of operational intelligence for American air forces in Europe, the leader of a powerful law firm, president of the American Bar Association, or United States Supreme Court Justice without paying attention to details, such as deadlines, punctuality, and productivity. And so, even now, I am sure to see Lewis Powell's elegant shadow gliding up to my office door and hear his refined drawl asking, "Anne, how is our draft coming along?" Well, then, wish me luck: If I am fortunate, this time the Justice will inquire about the progress of one of my co-clerks, probably Bill Stuntz, and I will offer to run to our upstairs Chambers and ask Bill what on earth could be taking so long with that case with the (for Justice Powell, at least) unpronounceable name. Either way, though, I will feel the pressure to get the draft done and get it done on time.

But, if you are writing for Justice Powell, being on time is not enough, for you also must get the writing right. Justice Powell cared deeply about the quality of the writing, for he was acutely aware of the work, for good and for ill, that words perform in our lives. Words are

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(most of) that stuff we call law, and, since the law occupied all of Justice Powell's professional life and imagination, words were (most of) the stuff of his life as well. Justice Powell found a phrase that captured the important place that words and writing occupy in law or, more specifically, the intimate relationship between words and the work the law does; he used this expression when discussing opinions of which he and we were a bit uncertain. "Let's wait and see whether it will write," he would say, and, in that gentle way, he both forgave our indecisiveness and acknowledged that the opinion and the writing were inseparable. But, when that opinion was one of his own, he and we could hardly wait to see whether and (precisely) how it would write. These crucial questions were ours, in the first instance, to resolve. What you must realize, too, is that those questions were followed by another in whose answer Justice Powell was deeply interested: Would four other Justices join in making his opinion (what he called) the law of the land? They would join, but only if the opinion wrote right.

That is why it seemed necessary (it was necessary, wasn't it?) for us to put him off—politely and quietly, but firmly—at least the first few times he asked to see the draft. I mean, just consider the position we found ourselves in. He (Himself) was to be the first audience for our draft; it was written *for* him, and, ultimately, it was to be *his* and, through him, the *Court's*. We shuddered at the thought of his eye falling on a typo, and you cannot imagine the horror of having him view an infelicitous word, a mangled phrase, or a garbled argument. Of course, I could tell a story or two that would convince you that we shuddered for a reason, but those stories would do some of us no credit, and, therefore, I know that Lewis Powell would prefer for me to withhold them. (But I am sure he would forgive me for remarking how sweet he was to me the time I had to show him an error in the color map we were using to illustrate his dissent in *Davis v. Bandemer*. How fond Justice Powell was of that map of gerrymandered voting districts! There, in red, yellow, blue, and green, appeared the grotesque and irrational boundaries drawn by partisan cartographers. And, so, how hard I gulped when compelled to show him the mistake! He always pretended that the error was introduced by the printer rather than by me, though I noticed that he inspected the corrected proofs himself with special care.) Trust me, you would have held onto those drafts for dear life too, feverishly writing and rewriting, until he could be put off no longer.

Now, don't get me wrong. When I say that Justice Powell cared about the quality of the writing, I do not mean to suggest that he appreciated writing that was elaborate, ornate, or flamboyant. (And, yes, he, too, made mistakes. As all Powell clerks know, he was treated to numerous lectures over the years on the difference between restrictive and nonrestrictive clauses and, especially, on the virtues of the latter. Nonetheless, he insisted on changing *all* appearances of the word "which" to "that," and it was several months into the term before we were brave enough to

seize the draft before it went to the printer and change them back.) His tastes ran to the workmanlike; he preferred that which was fairly plain and spare; he did not want too much more than was necessary to get the job done. If his opinions were furniture, they would be after the style of, say, a Shaker craftsman, rather than a Chippendale artisan. Their lines were clean and clear—that is, they were built like himself. He detested jargon, distrusted footnotes, and despised repetition. Once, when one of his colleagues (who, of course, here must remain anonymous) circulated a draft that was more than 100 pages long, Justice Powell carried the opinion to me on his outstretched palms and asked whether I thought Justice So-and-So planned to start charging readers by the pound.

As numerous writers before me have remarked, Lewis Powell was a courtly, courteous, kindly man—and, surely, he possessed all of those graces—but he was blessed with many more, one of which was a dry, sometimes sharply satirical, wit. Yes, just as surely, we must count this wit as a grace too, for it was a side of Justice Powell that my co-clerks and I greatly enjoyed. We waited for his drollery to erupt, as it occasionally did, and it punctuated and enlivened the many hours we were fortunate to spend with him. Indeed, that wit is a large part of our legacy as clerks, since it produced a whole collection of Lewis Powell stories, which we tell and retell each other. Yet, many of these stories are ones that he might not have told in public or, at least, might not have committed to writing, unless they were solely about himself and his own foibles. You see, Justice Powell also took great care with the tone of his writing, omitting anything that might tend to discredit one of his colleagues or wound their feelings unnecessarily.

Somehow, it now is many years later, and, yet, the task of coming forward with my draft does not seem easier than it did back then. It should be easier, shouldn't it? I will not have to endure (well, only where it matters, that is, in my imagination) the fear of his faint disapproval, encounter his slightly pained look, or construe the decisive marks made here and there on my pages by his hovering pen. I will not even have to worry about where he will file away this reprint, as I feel sure he did the others I sent him—after all, he once mailed me *copies* of postcards I had sent him a couple of years earlier during a trip to Europe—unquestionably, he filed the reprints somewhere. But, of course, my difficulty, my diffidence, arises this time because he is not here and never will be again. He will not see this draft by me, this draft that is meant to be *about* him as well as *for* him. No wonder that I hold onto the draft for dear life, pretending carefully and deliberately to write, edit, revise, choose this word over that, contemplate and then (with the Justice's predilections in mind) reject footnotes. For these few little moments, as I perform these familiar tasks—the last official acts I ever can perform for him—I feel that I am holding onto his life, which was so dear to so many of us.