

## Lewis Powell

Lewis Franklin Powell, Jr. (1907-1998) was an associate justice on the United States Supreme Court for the sixteen year period between 1971 and 1987. He was the 103rd justice to serve on the Court. During his time on the Court, he was known for his moderate beliefs and abilities at creating consensus among his fellow justices.

Powell was born in Suffolk, Virginia and did both his undergraduate and law education at Washington & Lee University, receiving degrees in 1929 and 1931. During World War II, Powell served as a colonel in the Army Air Force. His service took him around the world and he spent time in England, North Africa, and Sicily. Towards the end of his service he was also part of a secret team that worked to decipher encrypted German radio messages.

After the war, Powell returned to private legal practice and served as the Chairman of the Richmond School Board from 1952 to 1961. This position was controversial for Powell as he was embroiled in the bitter conflict over segregation in public schools, which the Supreme Court had ruled unconstitutional in its 1954 landmark decision of *Brown v. Board of Education*, 347 U.S. 483. Powell later went on to serve as president of the American Bar Association, a national professional organization for lawyers.

In 1971, President Nixon nominated Powell to fill the vacancy created by the retirement of Justice Hugo L. Black. Nixon had sought to nominate Powell earlier, in 1969, but Powell had turned him down. The Senate confirmed Powell by a vote of 89 to 1 (William H. Rehnquist was confirmed as an associate justice on the same day by a slightly closer vote of 68 to 26). Confirmed at the age of 64, Powell was the oldest person to be confirmed in over forty years (in 1930, Charles E. Hughes was confirmed at age 67).

While on the Court, Powell was known not for his major contributions to the development of the law, but rather for his pragmatism and collegiality. A former clerk called him the “intellectual balance wheel of the Court, mediating the philosophical extremes and brokering consensus” (Hutchinson, Dennis J. “Remembering Lewis F. Powell.” *Green Bag 2*: 163-167, 165). Data concerning Powell’s service on the Court seem to support this claim. Powell voted with the majority nearly 90 percent of the time. Ideologically, he tended to be more conservative than he was liberal, but not by a tremendous amount (he voted conservatively approximately 60 percent of the time). By contrast, Justice Rehnquist, who was confirmed the same day as Powell, tended to be both more divisive and more ideological.

Powell’s moderate nature routinely made him what commentators refer to as the swing vote on the Court. The swing vote is the justice who casts the deciding vote when the Court is locked in a four-to-four tie. Powell took on this role as the swing vote in two significant cases decided by the Court. At issue in *University of California Board of Regents v. Bakke*, 438 U.S. 265 (1978) was whether the medical school’s policy of giving preferential treatment to the disadvantaged and minority groups. The Court struck down the school’s particular program but left the door open for using race as a factor in admissions decisions.

A second major decision where Powell was the swing was in *Bowers v. Hardwick*, 478 U.S. 186 (1986). Here the question was whether Georgia’s anti-sodomy statute violated the U.S. Constitution. By a vote of five to four, the Court, with Powell in the majority, held that it did not.

Due to increasing health concerns, Powell retired from the Court in 1987. Justice Anthony M. Kennedy was confirmed as his successor. After retiring, Powell remained active in public life and the legal field, which included occasional service as a judge on the Courts of Appeal. Powell created a significant controversy when, after retiring from the Court, he

renounced his votes in two crucial cases. Powell stated that he should have opposed a death penalty decision and should have also voted the other way in *Bowers v. Hardwick*, which is to say he should have opposed a state law that banned homosexual sodomy. He died at the age of 91 in 1998.

**For more information:**

Jeffries Jr., John C. 2001. *Justice Lewis F. Powell, Jr.* New York: Fordham University Press.