

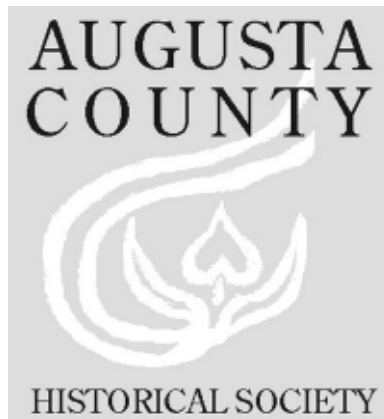


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Virginia facing reality

The 1959 Perrow Commission

by George M. Cochran
Virginia Supreme Court Justice, retired

The Augusta County Historical Society is pleased to present to its members the following document which details an important part of mid-twentieth century Virginia history. The author, Justice George Moffett Cochran, a longtime member of our organization, has presented this document to the society for its archives. Justice Cochran, who was born in Staunton in 1912, is the son of local attorney Peyton Cochran, and a descendant of A.H.H. Stuart, probably Staunton's most significant political figure of the nineteenth century. Justice Cochran graduated from Robert E. Lee High School, studied at the University of Virginia, completed his legal training and practiced with his father in Staunton. He served with the U.S. Navy during World War II, from January of 1942 to January of 1946, then returned to the practice of law. From 1948 to 1966 he served in the Virginia House of Delegates, and in 1966 was elected to the Virginia Senate. In 1969 he was appointed to the Virginia Supreme Court of Appeals, where he served until retiring in 1987. From the museum's founding in 1986 until 1998, Cochran was chairman of the board of the Museum of American Frontier Culture in Staunton. His recollections of the work of the Perrow Commission that follow provide an excellent record of a difficult period in Virginia history, one in which Cochran played a significant role in breaking Virginia's long tradition of racial discrimination.

Introduction

My friend, Kossen Gregory, of Roanoke, and I are surviving members of the 1959 Perrow Commission appointed by Virginia Governor J. Lindsay Almond, Jr., February 5, 1959, to recommend measures to solve the crisis in the Public Free School System of Virginia. We feel that our service on the Perrow Commission and thereafter in actively supporting in the General Assembly the legislation recommended by the majority of the commission was the most difficult and important of our legislative years. We also feel that the leadership role of the late State Senator Mosby G. Perrow, Jr., as Chairman of the Commission, has never been adequately recognized or appreciated.



I am using the Report of the Commission dated March 31, 1959, Concurring Statements, Dissenting Report, various newspaper clippings, especially from *The Roanoke Times*, and the fading memories of Kossen Gregory and myself to give a reasonably accurate general description of the five-year period (1954-1959) that we believe was the most difficult for Virginia in the twentieth century. I have also had the benefit of discussion that Kossen Gregory has had with Melville Carrico, now retired, then an active political reporter for *The Roanoke Times*, who covered the report of the Perrow Commission and the 1959 Special Session of the General Assembly that acted on the legislation recommended by the commission.

Necessity for Appointment of Commission

The Supreme Court of the United States, on May 17, 1954, in *Brown v Board of Education*, 347 US 483, struck down the state constitutional provisions and laws requiring racial separation of children in public schools. This decision, though unanimous, shocked the majority of the people of Virginia. I know of no member of the General Assembly of Virginia who ever voiced approval of the opinion. Some of us who began our legislative service in 1948 were veterans of World War II. We had introduced legislation providing for elimination of the Jim Crow laws and the Poll Tax as inappropriate restrictions on black citizens. Having recently served in a war that all Americans helped to win, we favored these concessions. We felt that voluntary action of this kind would promote racial harmony and might lead to greater cooperation between the races and less pressure to integrate the public schools at a later date. Whether this theory had any merit will never be known because the proposed legislation was never approved in Virginia.

Governor Thomas B. Stanley appointed in August 1954, a commission of thirty-two members of the Senate and House of Delegates, chaired by Senator Garland Gray, to consider the *Brown* case and to make such recommendations for Virginia as might be appropriate. Chief counsel for the commission was David J. Mays, a distinguished lawyer. The commission reported to the governor in November 1955, recommending a plan of pupil assignment that may not have been approved by the Federal courts, and a tuition grant program to assist students wishing to attend private (segregated) schools. The tuition grant proposal required amendment to the Virginia Constitu-



Virginia State Senator Mosby G. Perrow, Jr.

tion and this was promptly accomplished. The amendment was approved by the General Assembly and then by the voters of Virginia in a special election.

I had an opportunity to discuss briefly with David Mays the recommendations of the Gray Commission. They were, he said, the absolute maximum that could be drawn from *Brown*. He had informally reported this to Senator Harry F. Byrd, Sr., in Washington and the Senator had said that integration of the public schools could not be permitted to happen but he could offer no reasonable alternative.



The term “massive resistance,” refusal to permit any integration, was attributed to Senator Byrd and with such influential support it became a rallying cry for thousands of people throughout the South. The intellectual leader of this movement, or lack of movement, was James J. Kilpatrick, the fiery editor of *The Richmond News Leader*, who began to write powerful editorials espousing the doctrine of “interposition,” under which a state would interpose its sovereignty against the tyranny of the national government. The General Assembly of Virginia approved a resolution expressing this principle. Some doubtful members felt that this revival of John C. Calhoun’s old theory that appeared to have been defeated by the Civil War could be no more successful at this later date.

The Gray Commission had recommended a pupil assignment plan designed to continue for the most part racial segregation in the public schools and a tuition grant program for those unwilling to send their children to integrated schools. When it became clear that no one could guarantee that there would be absolutely no school integration under the Gray Commission plan, sentiment quickly changed in the attitude of the political leaders of Virginia. Governor Stanley, who had been a business executive and not a lawyer, declined to approve the Gray Commission report. Senator Garland Gray, Chairman of the Commission, repudiated its recommendations, followed by other commission members. The commission had been heavily weighted in favor of the Southside areas where the black population was larger than elsewhere in the state. Those who rejected the recommendations made after more than a year of deliberating became some of the most fervent leaders of the “massive resistance” movement.

In Washington, D. C., the “massive resistance” theme appeared to be strongly promoted by Senator Harry F. Byrd, Sr., Congressman and former Governor William M. Tuck, and Congressman Watkins F. Abbitt. In Richmond, the strongest voices were those of Attorney General J. Lindsay Almond, Jr. and Senator Mills F. Godwin.

In 1956 legislation was approved in Special Session that would close any public school integrated by Federal order. The following year, the Attorney General, J. Lindsay Almond, Jr., announced that he would run for governor. This announcement took at least one prospective candidate by surprise. Senator Garland Gray, a successful business executive and a long-time leader of the conservative bloc



of the Senate, had wanted to be governor. He was close to Senator Byrd, Sr., but he had not acted fast enough. Many people had committed themselves to Almond.

I remember receiving a call from J. Randolph "Bunny" Tucker, Jr., an able member of the Richmond delegation in the House of Delegates. He was soliciting support for Almond. "He is a good lawyer," said "Bunny," "and smart enough to know that if the 'massive resistance' laws are invalidated some integration will follow." I agreed to support him. Not long afterward, Senator Gray's son-in-law, Thomas Tullidge of Staunton, called on me to sound me out on Gray's prospects if he ran for governor. Since Senator Gray had headed the commission which made a recommendation of pupil assignment and tuition grants and then repudiated the recommendation, I suggested that Gray's indecision would be hard to explain or overcome.

Lindsay Almond went on to win the governorship, beating Senator Ted Dalton, the Republican candidate who had almost defeated Governor Stanley four years earlier. Dalton proposed local pupil assignment and Almond, a fire-eating Southern Fourth of July orator, overwhelmed him with "massive resistance" purple prose.

The year 1958 opened with Lindsay Almond as governor and former Senator Albertis S. Harrison, Jr., as attorney general. The governor gave a typically militant message to the regular session of the General Assembly. He had included in the Appropriation Act an appropriation of \$3,000,000 or a sum sufficient to pay tuition grants of \$250 per year for each student withdrawing from the public school system to go to a private school. The new attorney general began a series of uphill fights in the Federal courts to sustain the "massive resistance" laws. He later told me that it was a sad experience for a lawyer to enter a Federal court knowing he was almost certain to lose.

In September 1958, my wife and I were in Rome on our first trip to Europe, scheduled to feature in Paris the dedication of a plaque in memory of Woodrow Wilson given by the people of Virginia to the people of France. We passed a newsstand and saw, to our amazement, a copy of *Time Magazine* with Lindsay Almond's face adorning the front page. There he was, in full battle mode, white hair scattered over his face, holding the line on "massive resistance."

The "massive resistance" laws came under attack in the fall of 1958 in the Federal courts when six public schools in Norfolk, two in



Charlottesville, and one in Warren County, were closed under Virginia law because they were ordered integrated by Federal courts. A three-Judge Federal Special Court heard Norfolk petitions objecting to the school closing. In the meantime, a petition was filed by the Attorney General of Virginia against the State Comptroller requesting entry of a writ of mandamus after determining the validity of several “massive resistance” laws. Decisions in both cases were announced on the same date, the Federal decision after the State one.

The Supreme Court of Appeals of Virginia (now The Supreme Court of Virginia) decided, on a 5 to 2 vote, that the writ of mandamus be denied. The majority opinion written by Chief Justice Eggleston, held that Section 141 of the Virginia Constitution, invalidated by *Brown v Board of Education*, was independent of Section 129 requiring the Virginia to maintain an efficient system of public free schools throughout the state. Thus the laws under consideration violated Section 129 “in that they remove from the public school system any schools in which pupils of the two races are mixed, and make no provision for their support and maintenance as a part of the system.” The court, however, found no constitutional objection to the prescribed provisions for making tuition grants and left this to the discretion of the General Assembly. *Harrison v Day*, 200 VA. 439 (1959). On the same date, January 19, 1959, the Federal Special Court decided that the Virginia school-closing law violated petitioners’ rights under the United States Constitution.

Governor Almond’s initial reaction to the unfavorable court decisions was to make an appeal by radio and television to Virginians to stand firm with him because “we’ve only begun to fight.” A few days later he called the General Assembly into Special Session to consider the crisis. This would be the third Special Session called within three years. In addressing the Special Session the Governor was more realistic in his more thoughtful consideration of the court decisions. He acknowledged that he was now powerless to block the entry of some Negro students into some Virginia schools the next week. This admission enraged diehard segregationists who preferred for him to lock the schools or surround them with state police. I remember one Southside Delegate on the floor of the House calling the Governor a “traitor” to Virginia for his capitulation. This eloquence enabled him to run successfully for the Senate where he served for many years.



The governor proposed three stopgap measures that were duly approved. One repealed the mandatory schools attendance law. Another activated the tuition grant program by approving grants of \$250 each and appropriating \$3,000,000 or a sum sufficient to finance the grants. The third provided more severe penalties for making false reports of bombs in public buildings.

The governor announced that he would appoint a commission of members of the General Assembly to study the public school problem and make recommendations. On February 5, 1959, he appointed such a commission to be headed by State Senator Mosby G. Perrow, Jr., Chairman, to make recommendations to him by March 31, 1959. Four members were appointed for each of the ten Congressional districts in the state as shown below. An executive committee, consisting of one member from each Congressional district, was appointed as follows: Delegates Davis, Roberts, Pollard, Moore, and Cochran, and Senators Fitzpatrick, Godwin, Hagood, Button, and Fenwick.

An able lawyer and former member of the House of Delegates, W. R. Broaddus, Jr., of Martinsville, was named Counsel to the Commission. He was assisted by C. F. Hicks, Walter E. Rogers, and Henry T. Wickham.

MEMBERS OF THE COMMISSION

MOSBY G. PERROW, JR., *Chairman*

HARRY B. DAVIS, *Vice-Chairman*

First Congressional District

HOWARD H. ADAMS

HARRY B. DAVIS

RUSSELL M. CARNEAL

W. MARVIN MINTER

Second Congressional District

EDWARD L. BREEDEN, JR.

WILLARD J. MOODY

W. T. LEARY

JAMES W. ROBERTS

Third Congressional District

FITZGERALD BEMISS

EDWARD E. WILLEY

FRED G. POLLARD

JOSEPH J. WILLIAMS, JR.

Fourth Congressional District

JOHN H. DANIEL

GARLAND GRAY

MILLS E. GODWIN, JR.

JOSEPH C. HUTCHESON



Fifth Congressional District

J.D. HAGOOD

S. FLOYD LANDRETH

C. STUART WHEATLEY, JR.

HUNT M. WHITEHEAD

Sixth Congressional District

EARL A. FITZPATRICK

KOSSEN GREGORY

MOSBY G. PERROW, JR.

H. RAY WEBBER

Seventh Congressional District

CURRY CARTER

GEORGE M. COCHRAN

LAWRENCE H. HOOVER

ROBERT WHITEHEAD

Eighth Congressional District

ROBERT Y. BUTTON

ROBERT R. GWATHMEY, III

EDWARD O. McCUE, JR.

W. TAYLOE MURPHY

Ninth Congressional District

M. M. LONG

GARNETT S. MOORE

VERNON C. SMITH

HARRY C. STUART

Tenth Congressional District

JOHN A. K. DONOVAN

CHARLES R. FENWICK

C. HARRISON MANN, JR.

JAMES M. THOMSON

After extensive hearings and discussions, a majority report was signed by thirty-one of the forty members of the commission. This report recommended a bill to require the State Board of Education to adopt rules and regulations for the use of local school boards in making initial placement of pupils in the public schools, and creating a State Placement Board of Appeals to review the placement of pupils, with appeals to the State courts. The report further recommended a bill to provide for "local option" in dealing with compulsory attendance and a bill to provide for each child a minimum scholarship (tuition grant) of \$250. Drafts of bills to carry out the recommendations were included in an appendix. The report further recommended repeal of various sections of the Code.

Several qualifying or explanatory statements were filed by members of the majority. A dissenting report was filed by Godwin, Wheatley, Thomson, Hagood, Hutcheson, Carneal, Daniel, McCue, and Gray. This recommended removal of the mandatory provisions of the Virginia Constitution requiring the establishment and maintenance of an efficient free public school system throughout Virginia in order to continue "massive resistance." Some of us in the majority believed that



many dissenters knew the majority position was correct but voted against it for political protection in re-election campaigns.

On March 31, 1959, the Special Session of the General Assembly, in recess since February 2, 1959, reconvened to act on the Report of the Commission on Education (the Perrow Commission) filed that day with the governor. The atmosphere in the Capitol was tense. Many of us who were preparing to sponsor or support the legislation proposed in the majority report did not underestimate the difficulties. We firmly believed, however, that this was the most important session of the General Assembly since Reconstruction days after the Civil War. And several of us, brought by the governor from relative obscurity during the depths of "massive resistance" to active participation in the effort to face reality welcomed the opportunity to make an affirmative impact. Thus, Kossen Gregory felt that a short affirmative slogan would be helpful in promoting the Perrow Commission program. He proposed calling it the "Freedom of Choice" plan and this happy upbeat label was enthusiastically adopted as the motto for the crucial contest.

Although the Governor strongly backed it, passage of the legislative package recommended by the Perrow Commission was far from certain. The dissenters, who preferred to continue "massive resistance," had substantial support in the Senate and House. Composition of committees was important. In both bodies, massive resisters in substantial numbers were members of key committees. Moreover, in the Senate of forty members two, counted on to support the Perrow legislation, were absent. One, Stuart B. Carter, of Botetourt, was in Richmond but ill. The other, Robert Baldwin, of Norfolk, was absent without explanation. Baldwin was a man of courtly appearance and manners, popular in Norfolk, re-elected without effort, and admired in the General Assembly in Senate and House. Upon inquiry I was told that the Senator had gone to visit his daughter who was living in Italy. Later, it was suggested that he might be suffering from cancer and did not have long to live. This rumor was subsequently found to be incorrect. A sad ending to a political career; he failed to report for duty when it counted most.

Mosby Perrow took charge of the campaign in the Senate to pass the legislative program recommended by the Perrow Commission. He was assisted by Senator Fenwick and the other Senators who



served on the commission, including Senator Edward L. Breeden, Jr. of Norfolk, a master of parliamentary procedure. The opposition was led by Senator Godwin, assisted by Senator Gray and other dissenters. The commanding figure of Mills Godwin, however, was the magnet that attracted the defiant support of the “massive resisters” in and out of the General Assembly.

On the House side, Harry B. Davis, Vice-Chairman of the Commission and Chairman of the House Education Committee, led, assisted by Pollard, Gregory, Cochran, and others from the Perrow Commission. C. Stuart Wheatley, a Danville lawyer and a dissenter on the Perrow Commission, led the opposition, quietly supported by the Speaker of the House, E. Blackburn Moore.

Representatives from white citizens councils and other anti-integration groups made their wishes known for continued “massive resistance.” It was a tense time. There was even a report, never verified, that a shot may have been fired at the governor as he walked from the Executive Mansion to the Capitol. But there had been a considerable change in public opinion, especially in the business community, since the “massive resistance” laws had been invalidated, in January 1959, by both Virginia and Federal courts.

The so-called anti-Perrow Commission bloc in the Special Session of the General Assembly filed a resolution calling for a constitutional amendment to rewrite Section 129 to free the General Assembly from having to appropriate funds for public schools. The bloc also expressed opposition to the pupil assignment bill proposed by the Perrow Commission and to passage of any kind of compulsory attendance law.

The key recommendation of the Perrow Commission was the pupil assignment plan and this, of course, was bitterly opposed by the dissenters and their allies in the Special Session. Duplicate bills, one filed in the Senate, the other in the House, were designed to enact the pupil assignment plan into law. The bills were referred to the Education Committees of Senate and House, respectively, for action.

A day or two before the House Education Committee was to vote on the legislation, Hunt Whitehead, a member of the Perrow Commission (he had filed a qualifying statement) and a member of the Education Committee, spoke to me in confidence. He knew the bill was in the best interests of Virginia, he said. But he was in an impossible po-



litical situation. His people in Pittsylvania County were violently opposed to integration of the public schools. A man was standing on the street corner in Chatham waiting to see how he voted on the pupil assignment bill. If he voted for it he would never return to the General Assembly. Knowing how close the vote might be on the committee, I could only sympathize with Hunt and tell him to make the best decision he could under the circumstances. On April 13, 1959, the vote was taken in committee on my motion to approve. It passed by one vote, 9 to 8, and Hunt Whitehead cast the winning vote. As he had anticipated, he never was re-elected to the General Assembly. Without using his name I have often cited this as an example of political courage that was crucial but never rewarded. I am glad to record my eternal admiration for a statesman with the heart of a lion.

On the following day, April 14, the Senate Education Committee, after a public hearing, defeated on a voice vote the Senate pupil assignment bill. The next day, after four hours of debate, the House approved the House bill reported from the Education Committee 54 to 45, leading to final passage 54 to 46, which came without difficulty. This action brought the approved House bill to the Senate for final disposition. The problem was the anti-Perrow Commission majority on the Senate Education Committee. The parliamentary device used to permit a full vote on the pupil assignment bill was to resolve the Senate into a Committee of the Whole with Senator Breeden presiding. This was accomplished in dramatic fashion when Senator Stuart B. Carter was wheeled into the Senate chambers on a stretcher to cast the twentieth favorable vote. The total vote was 20 to 19 (Baldwin absent) with Senator Curry Carter, who had signed the majority report of the Perrow Commission, voting against the motion. Then, on April 20, on the same 20 to 19 vote the local pupil assignment bill was approved. Earlier on that date the House defeated the Wheatley resolution calling for amendment to the Virginia Constitution.

Various other noncontroversial legislation recommended by the Perrow Commission was duly approved, including, for instance, provision for reinstating compulsory attendance laws on a local option basis. Those of us who served on the Perrow Commission and helped put the program into law felt the satisfaction of having done something worthwhile for the Commonwealth. We felt that we had saved



the public school system of Virginia by a tiny margin. The “Freedom of Choice” plan had prevailed.

We were confident that continuation of the policy of “massive resistance” would have brought chaos to Virginia and would have permanently damaged the reputation of the state. We believed that the proposal to submit to the electorate a constitutional amendment to eliminate the requirement of funding for the public school system was only a delaying tactic. The majority of voters doubtless would have rejected the proposed amendment but the contest itself would have led to a continuation of bitter animosity.

Reckless, indeed, was the independent action of Prince Edward County in closing its public schools for five years, 1959-1964, by declining to appropriate local funds for public schools until a Federal court intervened. Only recently, fifty years after *Brown v Board of Education*, has official action been taken to recognize and provide some compensation for the pain and suffering caused to victims of the closings of public schools between 1954 and 1964. In the 2005 Session of the General Assembly *Brown v Board of Education Scholarship Program and Fund* was established (Code §30-231.1-10) to provide educational opportunities for persons who were unable to begin or continue their education because of public school closings in Norfolk, Charlottesville, Warren County, or Prince Edward County between 1954 and 1964. Of this fund of \$2,050,000, the sum of \$1,000,000 was contributed by a Virginia philanthropist. Scholarships are presently being awarded to qualified applicants.

We admired Mosby Perrow, a genial giant, a conservative Senator who generally would have been temperamentally close to the massive resisters but who was determined to save the public schools. He stayed in close association with the governor and planned the strategy for overcoming practical problems. Through his political skill and personality he converted a group of rugged individuals into an effective legislative team. His political fate followed that of other prophets--he was defeated in the 1963 election.

As for Governor Almond, after he decided to appoint the Perrow Commission, he never wavered in supporting the work of the commission. The days of purple oratory were over. He worked day and night to promote the legislative program recommended by the commission. I remember going to the governor’s den on the second floor



of the Mansion at 10 p.m. one night to request that he enlist the immediate support of the business community. I specifically suggested that he call, among other executives, Stuart Saunders, President of the Norfolk & Western Railway and ask him to organize the state-wide business executives who would suffer from abolition of the public school system. He promptly agreed and acted at once.

The governor was a pitiful figure at this time. The political leaders of Virginia remained committed to the repudiated doctrine of "massive resistance." He was left alone in the Mansion with his devoted wife, Josephine, and he was happy to have some of us eager Perrow Commission members come to him even late at night to plan ways and means of advancing the remedial program. As "Bunny" Tucker had told me months earlier, Almond was a good enough lawyer to know when Virginia and Federal courts invalidated his massive resistance laws, that the end of "massive resistance" must be recognized. For thus facing reality, his reputation suffered but the Commonwealth benefited from the return to the rule of law.

