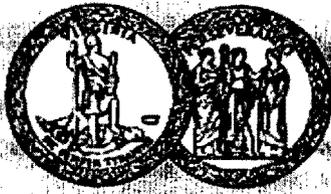


COMMONWEALTH OF VIRGINIA



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Memo to Members of the Gray Commission

Gentlemen:

In the interest of saving time, since we shall undoubtedly be pressed on Wednesday (and probably Thursday), I wish to set forth my views with respect to the Governor's proposal to withhold state funds, under certain circumstances, where integration occurs. What I have to say is equally applicable to variants of the same idea, such as the General Assembly itself providing by law that state funds shall be withheld from a school district or school which integrates.

Apparently this proposal has two general purposes: First, to act as a deterrent or to slow down those school boards which might attempt to use the assignment plan as a step toward integration; and second, cause a federal judge to hesitate to order integration, in the knowledge that the result will be a withholding of funds and probably, at the least, a temporary end to public schools in the area.

A third purpose, as broadly stated by the Governor, is to stop integration anywhere in Virginia. The manner in which he proposes to use this power is inherent in his stated purpose.

No one has a greater desire to stop integration than I, but I submit that this proposal either fails to accomplish its purpose, or is far too extreme a measure necessary to accomplish the end desired.

It is not necessary to threaten the existence of public schools to "blow down" certain school boards. This problem could be handled quite simply by having separate School Assignment Boards set up in the school districts, named by the Governor, General Assembly, or in any other manner desired, thus taking the whole problem of student assignment out of the hands of school boards.

As far as the proposal's effect on a federal judge is concerned, as a lawyer I can't imagine any judge in his right mind, no matter how sympathetic, much less a judge like Paul, permitting a statute withdrawing public funds from standing in the way of a finding that constitutional rights had been violated. The court's attitude would simply be, "Well, that's their pigeon."

The Governor's hope that his proposal will stop integration is patently baseless. If he attempted to use it on every occasion, his decision would be upset on the basis of capriciousness. If he did not use the power in every situation, then he defeats his own avowed purpose. Further, there are many sections of the state where the people would take whatever steps were necessary to maintain the public schools without state aid. In other words, withholding state funds won't stop integration. It should also be borne in mind that withholding of state funds could create an extremely hostile sentiment in a community, to the point where local defiance could easily be engendered.

Aside from the fact that the proposal will not accomplish what it sets out to do, it is basically unsound in principle because it is a direct threat to the public school system in many sections of the state, a threat created by reason of an occurrence beyond their control. It discriminates against a whole segment of people in the distribution of tax funds without any reasonable basis for the discrimination.

If such a power were to be lodged in the hands of the Governor, without definite, determinable standards for application, it would create a government by men rather than government by law, which we Virginians rightfully decry. Whenever, in weighing the merits of giving discretion to an executive, we must ask ourselves, "Would we also give this power to a man we distrust?" If not, the approach is wholly wrong.

Aside from the matter of principle, however, there is an even greater, overriding consideration. A very practical consideration. The withholding of funds from a section, because it had to integrate a negro child under the guns of a court order, or because there occurred a limited amount of integration which, in the opinion of the local citizenry, did not impair the efficiency of the school, would bring about a situation where the whole people in many areas would rise up against the policy of the state. This would likely happen in Norfolk, Richmond, Roanoke, Lynchburg, Northern Virginia, and the western half of the state. I believe it can be said with a fair degree of assurance that these sections are simply not going to let their public school system be placed in jeopardy. They are not going to permit them to be closed, whatever the cost. It would pit the white people of one section against the white people of another section when the full effort of the white people should be aligned with the state in its efforts. It would create a bitterness on the part of the white people in one part of the state against the white people in another part of the state which would be unparalleled in Virginia's history.

In our frequently repeated statement that the Supreme Court decision affronts our public sentiment, let us not overlook the danger of adopting measures which also affront public sentiment within the state. We must never forget that civil strife is not a one way street between a state and the federal government. It can also occur within a state itself when the laws are oppressive and unreasoning.

I reiterate, let us not create strife among our own people. To do so would be to play into the hands of our adversaries. We have too serious a fight, other than united.

