“PASSIVE RESISTANCE”: 1, SUPREME COURT: 0
THE FAILURE OF SCHOOL DESEGREGATION IN RICHMOND, VIRGINIA

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ABSTRACT
This thesis investigates the politics, people, and law surrounding the desegregation efforts of Richmond, Virginia’s public schools. Sources of information include newspaper and magazine articles, court cases, books, interview transcripts, online historical collections, and personal paper collections. Research findings include a better understanding of how the school desegregation battle in Richmond was shaped by interpretation of the equal protection clause of the 14th Amendment by the courts. Another discovery was how Senator Harry Byrd’s previously unflattering grip on Virginia politics was unable to survive the collapse of the Massive Resistance movement by the state’s conservatives, which he spearheaded. Finally, the research showed that a surprisingly small number of people - attorneys, politicians, judges, reporters - so greatly influenced the fate of Richmond’s public school integration. The research supports the conclusion that public school desegregation in Richmond was ultimately a failure. This failure was a result of several factors, including Richmond’s more moderate delaying tactics, known as “passive resistance”, which allowed segregation to remain largely intact in Richmond public schools for sixteen years. Additional factors in the failure of integration include the dramatic demographic shifts among public school students, largely a result of “white flight” to surrounding suburbs, and the courts’ limited reach in effectively mandating
meaningful public school integration. Collectively, these factors resulted in the failure of public school desegregation in Richmond.
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PROLOGUE

“If it’s offered, take it; the workload will be decreased, and you’ll live forever.”¹

Judge Robert Merhige followed this advice offered by his father and was sworn in as United States District Judge for the Eastern District of Virginia on August 30, 1967. Less than nine months later, on May 29, 1968, Richmond attorney Samuel Tucker appeared in Merhige’s chambers, formerly part of the presidential suite of Jefferson Davis, the Confederacy’s only president. Tucker demanded new hearing dates for all previously-heard school desegregation cases in Merhige’s district in light of the United States Supreme Court’s ruling in *Green v New Kent County*, issued the day before.²

Merhige recalls that despite his father’s recommendation, his life expectancy took a downward turn when he ordered the desegregation of Richmond schools utilizing widespread busing. The lives of his children and wife, as well as his own, were threatened almost daily. His dog was shot to death, a building on his property mysteriously burned to the ground. His appearance at any public establishment spurred a mass exodus of other patrons.³ Protesters slowly circled the courthouse in a hearse on some days, a parade they called “Merhige’s funeral dirge.” The chain of events leading to this one beleaguered federal district judge is part of the long story of the struggle for educational equality in Richmond and across the country.

It is not a happy story.

¹ Robert Merhige, Speech for Judicial conference for the 8th circuit.


³ Robert Merhige, Speech for Judicial conference for the 8th circuit.
INTRODUCTION

The desegregation of public schools in Richmond, Virginia, the former capital of the Confederacy, was a long and arduous process with dubious results. While other parts of the state ascribed to “Massive Resistance”, a course set by conservatives such as Senator Harry Byrd, Richmond took a more moderate but equally intractable course, a strategy historian Robert Pratt aptly describes as “passive resistance.” The tokenism of the Richmond approach kept the school system effectively segregated for sixteen years. While it did not result in the dramatic shuttering of schools and angry protests that the Massive Resistance camp provoked, it was a far more effective and enduring strategy by segregationists. The story of Richmond school desegregation is ultimately one of politics, people, and the law.

This thesis will explore the tactics employed in Richmond to frustrate integration and maintain segregation, particularly during the period of Massive Resistance. The hold of Senator Harry Byrd on the state’s politicians was remarkable, and one not easily broken. Most politicians were reluctant to support integration, making the struggle that much more difficult.

This thesis will also examine the influential players in the Richmond story. Despite the nearly two decade-long struggle, most major events or policies can be traced to a handful of key players: Attorneys Oliver Hill, Spottswood Robinson, and Samuel Tucker; School Board Chair (and later Supreme Court Justice) Lewis Powell; staunch

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segregationist Senator Harry Byrd, and District Judge Robert Merhige. The efforts of these men are woven through the chronology of the Richmond desegregation debate.

This thesis also examines the legal battle surrounding equal protection under the 14th Amendment from the end of the Civil War through the groundbreaking promise of the U.S. Supreme Court’s decision in *Brown v Board of Education*, and assesses the efficacy of the legal battle to desegregate public schools in Richmond and the eventual outcome.
CHAPTER 1

THE ROOTS OF SEGREGATION, 1865-1945:
RECONSTRUCTION, JIM CROW, AND THE RISE OF “SEPARATE BUT EQUAL”

The history of desegregation is in many ways a history of the 14th Amendment. Ratified in 1868 as part of the Reconstruction amendments, it declared all persons born or naturalized in the U.S. to be citizens and included some punitive measures prohibiting any former Confederate from holding office and prohibiting state or the federal governments from honoring any debt incurred in rebellion. However, the most significant section of the amendment declared as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.\(^5\)

The due process and equal protection clauses are the basis for most civil rights cases even today. The history of civil rights litigation laid the groundwork for the Brown v. Board decision and the subsequent school desegregation battle in Richmond. The story of the amendment and its legacy is a complicated one.

Reconstruction

The period from the end of the Civil War in 1865 through 1877 was both a promising and disappointing time for those seeking equal rights for all. Just six days after the surrender at Appomattox in April of 1865, President Abraham Lincoln was assassinated and Andrew Johnson was left to oversee the healing of the Union. Once sworn in as President, Johnson took a fairly lenient approach in allowing former

\(^5\) U.S. Constitution, amend. 14, sec. 1.
Confederate states to rejoin the Union. States simply had to convene a constitutional convention at which they would pledge allegiance to the nation, overturn the articles of secession, abolish Confederate debt, and ratify the 13th Amendment, which had been introduced by Congress on January 31, 1865, and made any form of slavery illegal. By the end of 1865, Johnson reported to Congress that Reconstruction was complete. However, none of the states rejoining the Union had given freed black men the right to vote, nor made any other provision for their rights, education, or livelihood. Many of these states, however, had imposed harsh restrictions on former slaves, known as Black Codes.  

Many in Congress were skeptical of Johnson and his declared victory, and formed a powerful joint committee to oversee Reconstruction. In early 1866, Congress extended this committee, the Freedmen’s Bureau, beyond its original one year commission. The Bureau was charged with overseeing provisions and care for refugees, resettlement for the landless onto confiscated or abandoned lands, the establishment of schools, and much more. Congress also passed the first Civil Rights Act, granting the federal courts oversight of the protection of the civil rights of newly freed blacks. President Johnson vetoed both bills, and Congress passed them again over his vetoes.

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7 Kluger, *Simple Justice*, 44.

8 Ibid., 46.
In June of 1866, Congress proposed a 14th Amendment to the Constitution. The amendment declared all persons born or naturalized in the U.S. to be citizens, prohibited any state from denying persons life, liberty or property without due process of law, or denying them equal protection of the laws. As noted above, the amendment also prohibited state or the federal governments from honoring any debt incurred in rebellion. This included any claims made for the lost value of an emancipated slave. The remaining Confederate currency and value of freed slaves was estimated at $5.2 billion that the South would never recover.\(^9\)

Johnson’s disapproval of the 14th Amendment was widely known, and most Southern states refused to ratify it. The elections of 1866 swept radical Republicans into power and they acted quickly, passing the First Reconstruction Act in 1867, placing the ten Southern states that had failed to ratify the 14th Amendment under martial law.\(^10\)

Despite championing civil rights, many even among the Radical Republicans were hesitant to give black men the vote. However, the Republicans needed the black vote to stay in power. After the elections of 1868, the 15th Amendment was introduced in early 1869 and took thirteen months to be ratified. It gave the right to vote to all citizens regardless of race, color, or previous condition of servitude, and gave Congress the power to enforce the amendment through “appropriate legislation.” This power of enforcement was needed as the Ku Klux Klan, an extremist and, at times, violent group founded in

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\(^9\) Ibid., 47-48.

\(^10\) Ibid., 48.
1865 to restore white supremacy during Reconstruction, continued to grow more powerful.\textsuperscript{11}

Elected in 1868, President Ulysses S. Grant was popular and beloved as the hero of the Union, yet not an experienced politician. Despite the struggles he faced reconstructing the nation, he steadfastly believed that the goals of the war should be manifested in the post-war policies.\textsuperscript{12} When the 15\textsuperscript{th} Amendment was ratified, Grant issued a special message stating that “the adoption of the 15\textsuperscript{th} Amendment to the Constitution completes the greatest civil change, and constitutes the most important event that has occurred, since the nation came to life.”\textsuperscript{13}

Indeed, in the decade following the passage of the Reconstruction amendments, black men voted in large numbers and were elected to office throughout the South. Public schooling was extended for both white and black students, and other positive changes were made.\textsuperscript{14} However, the rise of the Klan and other groups caused increasing terror and sought to put blacks back into a subordinate position. Voter intimidation and violence began to spread. President Grant signed the Force Acts of 1870-71 into law in an effort to use martial law and other federal power to restore order. Grant also appointed Amos Ackerman as attorney general, who, with Grant’s blessing, used federal marshals and

\textsuperscript{11} Ibid., 49-50.
\textsuperscript{13} Waugh, \textit{U.S. Grant}, 139.
\textsuperscript{14} Ibid., 140.
military force to arrest thousands of Klansmen in several states. Because of this effort, the presidential election of 1872 was widely considered fair and free.\textsuperscript{15}

However, many scholars believe the passage of these Force Acts ultimately had a negative impact on Reconstruction, violating the trust most Americans had that once the war ended, states’ rights would again be respected above the power of the federal government. Grant was accused by his Democratic opponents of imposing a military dictatorship.\textsuperscript{16} In 1879, years after his presidency, Grant expressed disappointment in Reconstruction, and stated that he felt military rule should have gone on for at least a decade to ensure justice and freedom and provide protection.\textsuperscript{17}

The undoing of Reconstruction came fairly quickly. By 1874, the House of Representatives had a Democratic majority. While the Civil Rights Act of 1875 gave all people, regardless of color, the right to accommodations in inns, public land or water, theaters, and other places of “public amusement,” the fight was lost to have schools included in the bill.\textsuperscript{18} Ultimately, the Supreme Court would declare the Civil Rights Act unconstitutional.

The final blow to Reconstruction came in the election of 1876 between Democrat Samuel Tilden and Republic Rutherford Hayes. Hayes needed the electoral votes in contested elections in Louisiana, South Carolina, and Florida. Hayes worked a deal for the votes in exchange for funding to build a railroad line and, most importantly, the

\begin{enumerate}
\item Ibid., 141.
\item Ibid.
\item Ibid., 150.
\item Kluger, \textit{Simple Justice}, 50.
\end{enumerate}
withdrawal of federal troops from the South.\textsuperscript{19} With this withdrawal, there was little oversight of election fairness or other newly-granted rights to freed blacks. Most Southern states quickly undid any Reconstruction protections.

The last bastion of Reconstruction would rest with the Supreme Court and its interpretation of the 14th Amendment.

**Judicial Interpretation of 14\textsuperscript{th} Amendment**

The interpretation by the U.S. Supreme Court of the equal protection and due process clauses over the next several decades eviscerated the 14\textsuperscript{th} Amendment. The first interpretation of the amendment by the Supreme Court came not in a civil rights case, but in the case of a state-created butcher monopoly in Louisiana. *The Slaughter-House Cases* of 1873 took the teeth out of the 14\textsuperscript{th} Amendment as it related to the civil rights of freed blacks. The Court found that the wording of the amendment clearly meant to distinguish between federal and state citizenship, finding “there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.” The Court concluded the 14\textsuperscript{th} Amendment did not apply to citizens’ rights in a state, but to their national rights, which the Court determined to be few: travel freely from state to state, access to federally owned land, access to national seaports, and so on.\textsuperscript{20} Under this view, states’ powers of local regulation under the 10\textsuperscript{th} Amendment were essentially immune from the 14\textsuperscript{th} Amendment’s protections.

\textsuperscript{19} Ibid., 61-62.

\textsuperscript{20} *The Slaughterhouse Cases*, 83 US 36 (1873).
Another setback to the early civil rights struggle came with the Supreme Court’s decision in *The Civil Rights Cases* of 1883. Each case challenged an act of discrimination based on the aforementioned Civil Rights Act passed by Congress on March 1, 1875. Two of the cases dealt with the denial to a person of color of accommodations at an inn or hotel, two were regarding the denial of admission to a theater, and one dealt with segregated railroad cars. The Court felt the main issue was the constitutionality of the Civil Rights Act, which guaranteed all persons the full and equal enjoyment of inns, theaters and other public places and stipulated that any person who violated it would be fined $500. The Court found that the 14th Amendment is only applicable to state action, not individual action, and Congress did not have the power to regulate private conduct, thereby voiding the Civil Rights Act as an instrument of federal protection of civil rights, which essentially were viewed as a matter of personal preference.

Despite these rulings, there were some early interpretations of the 14th Amendment that were positive steps forward for those seeking their civil rights. For instance, in the case of *Yick Wo v. Hopkins*, the San Francisco board of supervisors was given the right to grant or withhold licenses for the use of wooden buildings as laundries. The board denied licenses to all Chinese applicants yet granted licenses to nearly all non-Chinese applicants. Yick Wo was a Chinese citizen who sued for unfair distribution of the licenses based on race. The Court found in this case that the 14th Amendment is not

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22 The Civil Rights Cases, 109 US 3 (1883).
limited to the protection of U.S citizens. It went on to state that even if a law is “fair on its face and impartial in appearance,” if it is administered in an unfair way by a state or its subdivisions, it is a denial of equal justice and therefore a violation of the Constitution.\textsuperscript{23}

Despite the steps forward with \textit{Yick Wo}, a giant step backward was taken a decade later in the 1896 case of \textit{Plessy v. Ferguson}. The case involved Homer Plessy’s refusal to leave the white railroad car he boarded on the East Louisiana Railroad, which was required under state law to segregate its passengers by race in separate railroad cars. Though Plessy was born free and only one-eighth black, Louisiana law classified him as black and therefore he was required to ride in the car for colored people. At issue was whether the segregation of races by the state of Louisiana was unconstitutional under the 14\textsuperscript{th} Amendment. The Supreme Court found that while the purpose of the 14\textsuperscript{th} Amendment was to certainly enforce legal equality between the races, “it could not have been intended to abolish distinctions based upon color, or to enforce social…equality, or a commingling of the two races.” The court went on to find that laws separating the races “do not necessarily imply the inferiority of either race to the other.” The lone dissent in the case, that of Justice Harlan, asserted that the “Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.”\textsuperscript{24} Despite this dissent, \textit{Plessy} succeeded in endorsing the “separate but equal” doctrine that was rapidly being adopted throughout the country as a means of legal

\textsuperscript{23} \textit{Yick Wo v. Hopkins}, 118 US 356 (1886).

\textsuperscript{24} \textit{Plessy v. Ferguson}, 163 US 537 (1896).
segregation. Under *Plessy*, states could classify and separate individuals by race provided the separate facilities were “equal.”

The Supreme Court in three cases – the *Slaughterhouse Cases*, the Civil Rights Cases, and *Plessy* – essentially reduced the 14th Amendment to a shadow of its intended scope.

### Post-*Plessy* Era

Race relations in the nation continued to deteriorate after the *Plessy* decision. Between 1895 and 1900, an average of 101 blacks were lynched each year. The Republican Party increasingly turned a blind eye to the violence. Black scholar Booker T. Washington urged blacks to stop seeking integration and enfranchisement and instead focus on educating and bettering themselves.25 Many states began to adopt poll taxes and other means by which to deny blacks the right to vote, and the inequality in educational funding grew exponentially.26 By the turn of the century, it seemed as if all progress made during Reconstruction was lost.

There were some bright spots in the struggle for equal rights during this era. First, an important interpretation of the 14th Amendment came in a footnote of a case dealing with interstate commerce. In 1938, the Court heard *US v. Carolene Products Co.*, which dealt with the “Filled Milk Act” of 1923. The act prohibited the shipment in interstate commerce of milk containing any non-milk filler. Significant was Footnote 4 of the ruling, which stated that legislation appearing to be unfair against certain “discrete and

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insular minorities” may be “subject to more exacting judicial scrutiny under the general
prohibitions of the 14th Amendment than are most other types of legislation.” Although
Footnote 4 had no relevance to the legislation of regulating milk, it opened the door for
the strict scrutiny test employed in later cases involving “suspect classes” based on race.27

A second somewhat-promising ruling during this time came in Missouri ex rel.
Gaines v. Canada, another case from 1938. Lloyd Gaines was a senior at Lincoln
University in Missouri in 1935 and planned to attend law school. Despite the fact that the
University of Missouri law school had no admissions criteria other than academic ability,
they still denied Gaines’ application on the basis of race, giving him the choice of
accepting a scholarship to an out of state school or attend Lincoln, which was willing to
create a law school for him. Lincoln was a black college that at the time did not have a
law school. The lower court ruled the state had fulfilled its constitutional duties under the
“separate but equal” doctrine. However, in 1938 the Supreme Court ruled that Gaines had
the same rights to legal education as whites in Missouri. The Court’s ruling focused
largely on equality within one state, not among different states.28 Gaines closed the
loophole of sending students out of state for education that many states had utilized to
avoid providing “separate but equal” educational opportunities at the graduate and
professional level. While not a perfect solution in that it embraced “separate but equal”
education, the ruling at least made states responsible for providing “equal” educational
opportunities.


28 Mark V. Tushnet, The NAACP’s Legal Strategy against Segregated Education 1925-1950
The final highlight of the Plessy era was the founding of the National Association for the Advancement of Colored People in 1909 by a biracial group concerned about the increase in violence against blacks. The NAACP soon established a legal committee to help in the defense of blacks involved in such violence cases.\textsuperscript{29}

From 1925-1930, the NAACP began to formalize its litigation plan and received a financial grant from the American Fund for Public Service founded by Charles Garland, a wealthy activist.\textsuperscript{30} The Garland Fund, as it became known, provided support for legal action and for studying the school segregation situation in the South. Research found staggering inequality. For example, in Georgia in the late 1920s the state spent $36.29 educating a white student and $4.59 educating a black student. Teacher salaries were $97.88 per month for whites versus $49.41 for blacks.\textsuperscript{31} This was similar, sometimes worse, in all Southern states. These findings laid bare the realities of “separate but equal” education in segregated states.

Charles Houston had been consulting for the NAACP while maintaining his position as dean at Howard Law School. In 1934 he was hired as full-time staff of the NAACP and pushed for more court challenges to racial segregation in the nation’s public schools.\textsuperscript{32} In the early 1930s, the NAACP began to actively recruit black lawyers to the Legal Committee in order to stimulate activity in local branches. Among these recruits were several Richmond lawyers, including Spottswood Robinson and Oliver Hill.

\textsuperscript{29} Tushnet, \textit{NAACP’s Legal Strategy}, 1.

\textsuperscript{30} Ibid., 2.

\textsuperscript{31} Ibid., 5.

\textsuperscript{32} Ibid., 29.
As discussed in the next chapter, the culmination of the legal strategy by the NAACP in the post-World War II era led to a direct challenge to racial segregation in public schools. With Garland funding, the leadership of Charles Houston and future Supreme Court Justice Thurgood Marshall, and the involvement of Richmond attorneys Spottswood Robinson and Oliver Hill, the legal foundation of “separate but equal” began to crumble. But it would not go quietly – or quickly.
CHAPTER 2
SEPARATE AND UNEQUAL IN VIRGINIA, 1946-1953:
THURGOOD MARSHALL, OLIVER HILL, AND THE NAACP’S
DESEGREGATION STRATEGY

Since 1896, the South had operated dual school systems based on a precedent set forth in *Plessy v. Ferguson*. This case upheld the constitutionality of segregation so long as facilities for whites and blacks were equal, giving birth to the “separate but equal” doctrine that would reign for decades to come until explicitly overturned by *Brown v. Board of Education* in 1954.¹ *Brown* found that separate schools for children based on race were “inherently unequal,” and therefore in violation of the Constitution.²

While the *Brown* ruling in 1954 came as a shock to some, important groundwork had already been laid by earlier court cases dealing with desegregation in higher education, as discussed in Chapter 1. In the post-World War II years, several others desegregation cases at the university and professional school level made their way through the courts.

Meanwhile, the NAACP had grown into large organization by end of World War II. In 1930, the organization’s budget was just over $54,000. By 1947, the budget was $319,000. Between 1940 and 1946, the membership grew from 50,000 to 450,000, and the number of branches tripled.³ The NAACP had also begun to aggressively recruit lawyers to pursue desegregation in the courts. Two of their early recruits, Oliver Hill and

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¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896).


Spottswood Robinson, would go on to change the face of desegregation in Richmond.

Cases

Following the *Gaines* ruling in 1938, the Court continued to address segregation in higher education during the post-World War II years. In 1946, Ada Lois Sipuel filed suit against the University of Oklahoma after being denied admission to the law school. The Supreme Court ruled quickly and relied heavily on the *Gaines* decision, finding that the state must provide Sipuel with the same legal education afforded to white students.\(^4\) However, the Court left the same loophole as the *Gaines* ruling, allowing Oklahoma to open an equal law school for black students, which consisted of three rooms in the state capitol building. The Court again failed to address the separate but equal doctrine head-on.\(^5\)

Unhappy with Oklahoma’s response to the *Sipuel* case, several black students applied to various University of Oklahoma programs in 1948. George McLaurin, seeking his doctorate in education, was denied admission and sued the school. The university’s regents, trying to avoid a court battle, ordered him admitted under the condition that he remain segregated. Therefore, McLaurin had to sit in an alcove or anteroom in each in his classes.\(^6\) The Supreme Court found that this segregation impaired McLaurin’s ability to get the same education as the white students, and was therefore unconstitutional.\(^7\)

A case filed around the same time as *Sipuel, Sweatt v. Painter*, involved Heman

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\(^4\) Tushnet, *NAACP’s Legal Strategy*, 141.

\(^5\) Ibid., 122.

\(^6\) Ibid., 125.

\(^7\) Ibid., 132.
Sweatt, who was identified by the NAACP as a potential test case. Sweatt wanted to attend law school at the University of Texas, and just as the NAACP predicted, was denied admission on the basis of race. The Court’s opinion in *Sweatt v. Painter* referred to the importance of both the tangible and intangible elements of an education, and concluded that equality could not be achieved in segregated graduate and professional programs. Many legal scholars felt this finding opened the door for elementary and secondary school cases, and Thurgood Marshall decided the time was right to directly attack the “separate but equal” doctrine.

**NAACP Strategy**

By 1950, Marshall, who oversaw the NAACP’s legal strategy, no longer wanted to put off addressing elementary and secondary education cases. However, his and the NAACP’s strategy began much earlier. Marshall was a former student of NAACP special counsel and former dean of Howard Law Charles Houston, and together they set the agenda for attacking segregation in court. While Marshall originally kept a practice after his graduation from Howard Law in 1933, he eventually devoted so much of his time to the NAACP (for very little pay) that Houston added him to the staff in 1936. Houston recruited both Marshall and Marshall’s Howard Law classmate Oliver Hill to become involved with the NAACP’s legal strategy. In 1947, Marshall arranged to pay

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8 Ibid., 125-126.
9 Ibid. 132.
10 Ibid., 134-135.
11 Ibid., 107.
12 Ibid., 45-47.
Spottswood Robinson for a one-year effort to establish a national litigation plan for elementary and secondary education. By the end of the year, Robinson had examined the situation in seventy-two districts across the South, and had cases open in thirty-eight of them. However, the cost of pursuing an education case and all the investigation required in each district was prohibitive. By the end of 1950, only three cases were in court. The NAACP lacked resources for more cases.\(^{13}\) Three weeks after *Sweatt* and *McLaurin*, Marshall convened lawyers to “map…the legal machinery” of an attack on segregation.\(^{14}\)

At the local level, the road to the implementation of *Brown* in Richmond was paved in large part by the work of Hill and Robinson, along with their colleagues. This esteemed group also included Martin A. Martin, Henry Marsh, and Samuel Tucker. In the early days of his career in Virginia, when Hill was beginning to make a name for himself as a civil rights lawyer, he estimates there were only about forty other black lawyers in the whole state.\(^{15}\) Despite these odds, this group of attorneys was instrumental in chipping away at school segregation in Richmond, and later working to implement desegregation after the *Brown* ruling.

Born in 1907, Oliver Hill was raised in Virginia, and was himself very familiar with segregation and discrimination.\(^{16}\) While Hill was growing up in the teens and early 1920s in Roanoke, the highest grade for black students was grade eight. Though the

\(^{13}\) Ibid., 110.

\(^{14}\) Ibid., 136.


\(^{16}\) Hill, *Big Bang*, 1-2.
school board decided to add each new grade the year before Hill’s class was to enter, after finishing eighth grade in Roanoke in 1923, Hill moved to Washington, D.C., and attended Dunbar High.\(^\text{17}\) Compared to the black schools in Virginia and Maryland, Washington’s were far superior. However, that is not to say black students did not experience inequalities. Hill recalled that on his several mile walk to Dunbar, he passed within the proximity of three white high schools.\(^\text{18}\)

Hill attended college and law school at Howard University in Washington, D.C.,\(^\text{19}\) and never considered himself much of a student until his years in law school.\(^\text{20}\) Growing up with Jim Crow, Hill became determined to challenge segregation as a lawyer.\(^\text{21}\) Hill was a classmate at Howard Law with Thurgood Marshall, where they were leaders of the rival fraternities and standouts on campus.\(^\text{22}\) Despite this rivalry, Hill and Marshall became close friends.\(^\text{23}\) Hill graduated second in the Howard Law Class of 1933; Thurgood Marshall was first.\(^\text{24}\)

After graduation, Hill married Beresenia Walker in September of 1934 and moved

\(^{17}\) Ibid., 28-29.

\(^{18}\) Ibid., 37.

\(^{19}\) Ibid., 29.

\(^{20}\) Ibid., 58.

\(^{21}\) Ibid., 76.

\(^{22}\) Ibid., 74.

\(^{23}\) Ibid., 79.

back to Roanoke and began his law practice. After struggling to make it in Roanoke, and then D.C., Hill eventually settled in Richmond in 1939, where his career began to take off.

As a young lawyer in the mid-1930s, Hill became active with the NAACP, and along with Charlie Houston organized the Virginia State Conference of NAACP Branches in 1935. However, Hill and his colleagues had an uphill climb when it came to educational equality. By the 1940s, the South in general spent almost three times as much on educating a white student as it did a black one. In Georgia and Mississippi, it was five times as much.

Hill worked on many criminal and civil rights cases in his early career, but became involved with the struggle for equality in education in 1939 in a case challenging the inequality of teacher pay based on race. The plaintiff, Norfolk teacher Aline Black, had not been offered a contract for the next year, despite her eleven years of service.

In this case, which later came to be known as Alston v. School Board of the City of Norfolk, Hill, Marshall, and two colleagues argued on behalf of the teachers in district court and lost. On appeal the ruling was reversed by the Circuit Court. At issue was whether fixing the salaries of black teachers at a lower amount than white teachers of

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25 Hill, Big Bang, 90.

26 Ibid., 100-101.

27 Ibid., 97-98.


29 Hill, Big Bang, 122.
equal qualification, based solely on race, was a violation of the equal protection and due process clauses of the 14th Amendment. The lower court found that teachers waive their rights when they enter into a contract with the school board for that amount of pay. However, the Circuit Court found clear discrimination on the basis of race, and also found that signing contracts does not preclude teachers from asking for relief from unconstitutional practices, reversing the lower court’s decision.\textsuperscript{30}

After serving in World War II, Hill returned to Richmond and along with Martin A. Martin and Spotswood Robinson founded the firm of Hill, Martin, and Robinson, where they served as co-counsel for the plaintiffs in a desegregation case involving Prince Edward County public schools.\textsuperscript{31} They made a name for themselves with this case, as it would later be incorporated into \textit{Brown v. Board of Education} and be argued in front of the Supreme Court.

On April 23, 1951, Barbara Johns, a senior at Robert Moton High in Prince Edward County, led her class on a strike demanding better school facilities. Oliver Hill recalled Johns’ plea to him in a 2000 interview, remembering how she called the offices of Hill, Martin and Robinson about five o’clock one afternoon while the three men were working in the library. Hill was at first reluctant as the firm was already involved in a school desegregation case. However, Johns made such a compelling argument about how her class wanted to make a real statement that Hill agreed the three of them would stop by Farmville, where Moton High was located, in a few days on their way to another town.

\textsuperscript{30} Alston v. School Board of the City of Norfolk, 112 F.2d 992, Cert. denied, 311 U.S. 693 (1940).

where they had business.\textsuperscript{32}

Another factor in Hill’s decision to meet with the students was that he was familiar with the terrible condition of Moton High. He had seen it on his travels around the state, and recalled that “they had two or three tar shack buildings and had pipes running from one building to the next … and the heat was uneven and, then of course, outside the main building, in inclimate weather, kids had to come through the rain or in the mud … going from one building to another. It was a horrible condition.”

Hill remembered the morale of the students was so high the morning that the three lawyers stopped in Farmville. The attorneys agreed that if the students could get their parents’ support, they would take on the case. The next evening, on their way back to Richmond, they again stopped in Farmville to meet with the parents. At this meeting, the parents decided to have a full community meeting about the issue to decide if they should file suit. The next week the town came out in droves to discuss it. Hill remembered there were very few dissenting votes. A suit was filed soon thereafter. Later, Hill admitted that they were not looking to pick up a case, and certainly not one in Farmville.\textsuperscript{33} However, this case went on to become part of the most important piece of school desegregation litigation.

Fashioned as \textit{Davis et al. v. County School Board of Prince Edward County, VA, et al.}, the case was argued by Hill and Robinson, along with another lawyer from New York City, before the District Court in late February of 1952. The state of Virginia was


\textsuperscript{33} Hill, Interview.
represented by Attorney General J. Lindsay Almond, who later became governor. The decision was handed down a week later, on March 7. The plaintiffs, who were the parents of the black students calling for an end to segregation, directly challenged Section 140 of the Virginia Constitution, which mandated that “white and colored children shall not be taught in the same school.” They also sought the correction of the inequalities between white and black school facilities.

Hill and his legal team presented testimony from educators, anthropologists, psychiatrists and psychologists supporting the argument that segregation is detrimental to the development of black children. While such testimony would prove effective in the appeal of this case - when it would be bundled into the Brown case - it was not successful for Hill and his colleagues this time.

On the question of the constitutionality of supporting racial segregation, the court found on behalf of the state, citing over eighty years of precedents for separate schools in Virginia, and finding no argument by the plaintiffs that would warrant the nullification of the Virginia state constitution. The court deferred to the state, finding “no hurt or harm to either race….It is not for us to adjudge the policy as right or wrong – that, the Commonwealth of Virginia shall determine for itself.”

The court did, however, find evidence of inequality between black and white schools, a fact which the defendants confessed to being true. It was brought to light during the trial that Moton High, the school in question, had no gymnasium, no showers or dressing rooms, no cafeteria, no teachers’ rest rooms, no infirmary, no industrial arts shop, and inadequate science facilities. It was noted in the ruling that while the white
schools offered physics, world history, Latin, advanced typing, drawing, and wood, metal, and machine shop work, none of these classes were offered at Moton. Moreover, black schools had not been given a fair share of the newer school buses. The court ordered the state to “replace the Moton buildings and facilities with a new building and new equipment, or otherwise remove the inequality in them.” By the time the ruling was issued, $840,000 and the necessary land had been appropriated for the building of a new high school.

Though it was certainly not the outcome Hill, Robinson, and the plaintiffs hoped for in that it did not go so far as to strike down segregated education, the Davis case, upon appeal to the Supreme Court, was consolidated into Brown v. Board of Education, which would forever change the course of public education.\textsuperscript{34}

\textsuperscript{34} Davis et al. v. County School Board of Prince Edward County, Va., et al., 103 F. Supp. 337 (1952).
The case of *Brown v. Board of Education* was a consolidation of four school desegregation cases from Kansas, South Carolina, Delaware, and the *Davis* case from Virginia.

The Kansas case, *Brown v. Board of Education*, involved the challenge to a Topeka, Kansas, law permitting cities to operate separate schools for black and white children. While the lower court did find that segregation has a negative effect on black children, it denied relief after finding that the black and white school facilities were equal.

*Briggs v. Elliott*, the case out of South Carolina, challenged the state constitution and statutory codes dictating that black and white children must be educated separately. The District Court found that the black schools were inferior to the white facilities and ordered the schools be equalized, but denied the admission of black students to white schools.

The Delaware case, *Gebhart v. Belton*, also challenged the state’s constitutional and legal mandates of segregated public schooling. The lower court not only found the schools to be unequal, but also found that segregation had a detrimental effect on black students, unlike the court in the Kansas and South Carolina cases. That court ordered the
immediate admission of black students into white schools. The Supreme Court of Delaware upheld the decision, and the defendants appealed to the U.S. Supreme Court.

The *Davis v. County School Board* case from Virginia was the case involving the students at Moton High discussed in the last chapter. The case challenged the state constitution and laws requiring segregated public schools. Much like the South Carolina case, while the District Court found inequality among the black and white school facilities and ordered the black schools be improved, it upheld segregation in public schools.¹

When *Brown* came before the Court in 1954, John W. Davis was lead lawyer for the defendants. He was 80 years old at the time. Thurgood Marshall, who would argue on behalf of the plaintiffs, had been the NAACP’s chief lawyer since 1938.² He was 45 years old.

At issue in *Brown* was whether denying black students admission to white public schools was a violation of the equal protection clause of the 14th Amendment, which prohibits states from denying a person the equal protection of the laws.

Earl Warren served as Chief Justice of the United States from 1953 until 1969. Warren was extremely popular as the governor of California, and during his third term was appointed as Solicitor General by President Eisenhower. However, Chief Justice Fred Vinson died of a heart attack before Warren assumed his appointment, and Eisenhower instead made good on an earlier promise to Warren, appointing him to the

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Supreme Court despite his perceived lack of experience. It was during Warren’s time on the bench that the equal protection clause of the 14th Amendment was revived as a major foundation for constitutional rights.

Chief Justice Warren delivered the unanimous opinion of the Court. He began by giving a nod to the history leading up to the decision, noting that the concept of “separate but equal” did not come about until the 1896 case of *Plessy v. Ferguson*, and in the half century since the Supreme Court had heard six cases involving the doctrine. However, in two of these cases, *Cumming v. County Board of Education* and *Gong Lum v. Rice*, the doctrine itself was not challenged. In the four more recent cases of *Missouri ex rel. Gaines v. Canada*, *Sipuel v. Oklahoma*, *Sweatt v. Painter*, and *McLaurin v. Oklahoma State Regents*, as discussed earlier, inequalities were found at the graduate school level by the Court, but it had not been necessary to reexamine “separate but equal” because the states in each case provided options deemed adequate under the doctrine. As Warren pointed out, the Court in *Sweatt v. Painter* had specifically reserved judgment on the doctrine. Therefore, this case was the first time the doctrine had been challenged directly.

In the opinion, Warren continued that the Court must not only examine the tangible evidence of desegregation such as school facilities, but also the intangible factors inherent in educational opportunity. The Court found that even if all the tangible factors were equal, segregation of public school children based on race deprives minority children of intangible equal educational opportunities, rendering “separate but equal”

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inherently unequal.

Warren noted that the earlier graduate school cases also relied on intangible factors, such as the subjective qualities that make a law school great (*Sweatt v. Painter*), or the inherent value in the ability to engage in discussion, study, and exchange ideas with classmates (*McLaurin v. Oklahoma State Regents*). When these intangible factors were applied to grade and high school, the separation of children based on race “generated a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” Warren summed up the Court’s findings with the conclusion that “separate educational facilities are inherently unequal,” and therefore do not - indeed cannot - afford the equal protection under the law guaranteed by the 14th Amendment.5

The Reaction

*Brown* was a short and somewhat ambiguous decision, just eleven pages. Primarily the brevity of the opinion was because the Chief Justice insisted on unanimity, which meant saying as little as possible to avoid dividing the Justices. It was also because Warren hoped that a brief opinion would avoid inflaming the South; Warren, to his surprise, was totally unsuccessful in this attempt.6

Early reaction to *Brown* was varied, and often passionate. Chief Justice Warren was disappointed in the lack of support for *Brown* from President Dwight Eisenhower, who said with little enthusiasm that *Brown* was now the law. In his memoirs, Warren

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wrote that he believed that having the President’s popularity behind the decision would have “relieved…many of the racial problems which have continued to plague us.”

The momentous occasion was not lost on the Court. Associate Justice Felix Frankfurter wrote a note to Chief Justice Warren congratulating him on the ruling, noting that it was a day that “will live in glory”, and “a great day in the history of the Court.”

While *Brown* “lifted from the Court the burden of its history,” in the words of scholar J. Harvie Wilkinson, it was not a sudden change. The shift started in the late 1930s with cases that admitted black students to white schools, outlawed the white primary, and ended racial covenants in housing sales. Nonetheless, *Brown* was revolutionary – it mandated the century-old system of state-ordered segregation in public schools was unlawful, and must end.

Among some conservative whites in the South, a resistance was being formed, led by Virginia Senator Harry F. Byrd. Byrd responded to *Brown* by calling it the “most serious blow that has been struck against the rights of the States,” and Byrd believed *Brown* would not promote education, but encourage the opposite.

The mainstream media urged calm, though later many of the same papers would lambaste desegregation initiatives. The day after the *Brown* ruling, the *Richmond Times-

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7 Ibid., 24.


*Dispatch* called for “calm and unhysterical appraisal” of the ruling, but assured citizens that “segregation in the public schools of the South is not about to be eliminated. Final achievement of that objective is years, perhaps many years, in the future.”  

The same day, the *Richmond News Leader* wrote “this newspaper…believes in segregated schools. We believe also in abiding by the law….But the court should not misunderstand or underestimate the depth of resentment this opinion will create among a people who feel they have been wrongly imposed upon.”  

In the black community in Virginia, the reaction was mostly excitement, often tempered with caution. The Virginia NAACP called the decision “a landmark comparable to the Declaration of Independence.”  

Civil rights leader Ralph Bunche was so excited he cashed a check at the bank and left the money on the counter. He later said that the decision, based on early reports, “appears to be an historic event in the annals of American democracy.”

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13 Ibid., 3.

14 Ibid., 3.

Thurgood Marshall recalled being so happy he was numb. He predicted to the New York Times that school segregation in America would be entirely eradicated within five years, and by the 100th anniversary of the Emancipation Proclamation in 1963, all forms of segregation in the country would be erased.\textsuperscript{16}

However, while calling it “the greatest victory we ever had,” Marshall was also wary of Southern lawmakers who would try to defy the ruling. He pledged that anyone trying to evade the ruling would find themselves “in court he next morning- or possibly that same afternoon.” Marshall’s fears came true. Just five weeks after the ruling, Virginia governor Thomas B. Stanley vowed to use every legal means possible to keep the state’s schools segregated.\textsuperscript{17} On May 24, 1954, Governor Stanley asked to meet with Oliver Hill and a few other Virginia NAACP leaders. The governor said that now that the blacks had made their point, they should “let it ride.” Hill and his colleagues rejected the governor’s suggestion.\textsuperscript{18}

\textit{Brown II}

The Supreme Court requested further arguments follow the \textit{Brown} decision to determine the course of relief for the plaintiffs. The resulting opinion became known as \textit{Brown II}. At issue was how black students should be admitted to white schools and who should oversee the desegregation. The Court found that local school authorities would be

\textsuperscript{16} Kluger, \textit{Simple Justice}, 714.

\textsuperscript{17} Pratt, \textit{Color}, 3-4.

responsible for implementing desegregation, while local courts would determine whether
the districts were making “good faith” efforts to implement desegregation.\(^\text{19}\)

Due in part to the death of Justice Robert Jackson and the somewhat controversial
appointment of Justice John Harlan, oral arguments did not begin in \textit{Brown II} until April
of 1955, eleven months after the first \textit{Brown} decision. By the time the Court handed
down the decision on May 31, 1955, fifty-four weeks had passed. While the NAACP’s
lawyers argued that integration must begin immediately, the Southern states sought a
more gradual approach. Six Southern states sent representatives to argue before the
Court, persuading caution. Virginia’s Attorney General J. Lindsay Almond warned that
moving too quickly would result in, “chaos, engendering of racial bitterness, strife and
possible circumstances more dire.”\(^\text{20}\)

The ruling by a unanimous Court did not set a firm deadline or timetable for
desegregation, instead issuing the controversial “with all deliberate speed” directive for
the admission of black students to desegregated schools. In the ruling, the Court allowed
for the lower courts to “consider problems of administration” when determining if
districts were taking steps toward compliance. The ruling pointed specifically to the need
to address the physical condition of the schools, transportation and personnel issues, as
well as the revision of district lines.\(^\text{21}\)


In retrospect, the Court’s olive branch of grass roots gradualism derailed the promise of *Brown I* for generations. Many would argue *Brown II* allowed for foot-dragging by the states. As judge and scholar J. Harvie Wilkinson noted, where constitutional rights are concerned the Court generally offers no deference to administrative concerns, making the *Brown II* decision all the more curious. Indeed, many in the South were relieved by the ruling, especially the Court’s suggestion that desegregation would likely take time given acknowledged obstacles.\(^{22}\)

Oliver Hill noted in his autobiography that “unfortunately, the nefarious and fundamentally inadequate ‘all deliberate speed’ doctrine constituted an abject failure in the attempt to accomplish a desegregated public school system. This noble objective was undermined as the Supreme Court sent out conflicting signals.”\(^{23}\)

Some criticism was even more pointed than Hill’s. Loren Miller, former vice president of the NAACP, noted that “the harsh truth [was] that the first *Brown* decision was a great decision; the second *Brown* decision was a great mistake.” Lewis M. Steel, associate counsel for the NAACP, was fired after his scathing criticism of the *Brown II* decision in 1968. Steel believed the Warren Court “was a white court which would protect the interests of white America” and that *Brown II* was “more shameful than the Court’s 19\(^{th}\) century monuments to apartheid.”\(^{24}\)

Despite the arguments for and against the ruling, the outcome was clear: many states avoided meaningful integration for years. By 1962, not a single black student


\(^{23}\) Hill, *Big Bang*, 170.

attended a white school in Mississippi, Alabama, or South Carolina. In 1964, one decade after the first Brown ruling, only 2.3 percent of black students in southern states were attending desegregated schools.\footnote{Ibid., 65.}

Interestingly, the border states – namely Missouri, Maryland, West Virginia, Kentucky, and Delaware – made great progress in desegregating their schools in the first few years after Brown. However, these states had a lower population of black students than the states farther to the south, which seems to have resulted in an easier road to desegregation. The state of Virginia at the time had a population that was twenty-two percent black; Mississippi, in the heart of the so-called “black belt,” was forty-five percent black.\footnote{Ibid., 69-70.}

Wilkinson posits that “all deliberate speed” and the resulting tokenism provided an alternative to massive resistance long enough for diehard segregationists to begin to seem like “ludicrous posturer(s).” He argues that with enough time, the court of public opinion came down on the side of integration. As Wilkinson points out, the Court faced great political odds in implementing Brown. President Eisenhower was a staunch advocate for states’ rights, and therefore not a vocal supporter of the decision. Congress had a strong Southern voice. Given the temperature of the nation, Wilkinson believes that “the Court later erred tragically in implementing and monitoring that famous phrase, but not in formulating it.”\footnote{Ibid., 75-77.}
However, many would argue that moderation was not the answer, noting that the slow pace of desegregating allowed by the “all deliberate speed” doctrine denied black students of their civil rights for years to come. Whether or not the Supreme Court avoided civic upheaval by taking the moderate path of *Brown II* instead of calling immediately for desegregation is impossible to know, but what is known is the pace of desegregation in Richmond and most of the South was slow, and the policies fraught with controversy.
CHAPTER 4

MASSIVE RESISTANCE, “TOKEN COMPLIANCE”, 1 1956-1967:
HARRY BYRD, JAMES KILPATRICK, AND LEWIS POWELL

In August of 1954, after the first Brown decision, Virginia Governor Thomas B. Stanley organized a commission of thirty-two white community members to decide a course of action. The group elected state Senator Garland Gray as their chairman, and the group became known as the Gray Commission. Their plan, the “Gray Plan”, was published in November of 1955, after the Brown II ruling had been made. It was only one of several proposed by various groups to integrate schools following the “all deliberate speed” order.

The Gray Plan found it unwise to directly challenge the Supreme Court, and instead proposed that local school boards be given authority over pupil assignment “in such manner as will best serve the welfare of their communities and protect and foster the public schools under their jurisdiction.” The plan went on to propose as follows:

No child be required to attend a school wherein both white and colored children are taught and that the parents of those children who object to integrated schools, or who live in communities wherein no public schools are operated, be given tuition grants for educational purposes. 2

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The Pupil Placement Board was created to oversee the first recommendation, and was to oversee all applications for black students to attend white schools.³

In addition to the Gray Plan protecting segregated schools, a larger movement against integration was forming in the state, and all over the South, with U.S. Senator Harry Byrd of Virginia leading the charge. This movement would dub itself “Massive Resistance.” Like many, Byrd felt the Gray Plan did not go far enough to maintain segregated schools.⁴

In August of 1956, Senator Byrd introduced an anti-integration plan, later known as the Stanley Plan after the governor, to the Virginia General Assembly during a special session convened by Stanley himself. It proposed a state Pupil Placement Board rather than leaving pupil assignment up to the local school boards, as well as a law requiring the governor to close any public school threatened with integration. The plan also proposed that any school consenting to integration would lose all state funding, and that public funds be used to provide private school tuition grants in areas where schools were closed to prevent integration.⁵ The adoption of this package of legislation on September 17, 1956 marked the formal beginning of the Massive Resistance movement in the state.

At the end of 1956, the Virginia Pupil Placement Board was officially organized.⁶ It was described by the Richmond Times-Dispatch as “first line of defense against


⁴ Pratt, Color, 5.

⁵ Ibid., 7.

⁶ Ibid., 21.
integration.” The three-member board was granted authority by the state legislature to oversee all pupil placements and transfers throughout state. No desegregation had occurred before that point in Richmond; little would occur for years to come. The Pupil Placement Board cited lower academic performance of black students as well as physical distance from white schools to deny transfers.\(^7\)

Civil rights attorney Oliver Hill recollected in an interview later in his life that:

*Even during the first year, between the *Brown* decision in ’54 and the remedy in ’55…Virginia had called people all over the South to start working on how they were going to avoid the *Brown* decision; there never was any intent to support it. They came up with “Massive Resistance” and set up what we know as pupil placement boards. The purpose of that was, if any Negro wanted to go to school attended by…white people they had to apply. Well, theoretically, everybody had to apply to the pupil placement board. But, of course, nobody did, unless you were going to challenge the segregation.*\(^8\)

In 1957, James Lindsay Almond, former Attorney General of the state, was elected governor after running on a platform of Massive Resistance. In the fall of 1958, schools began closing in some parts of Virginia rather than integrating, in keeping with the Massive Resistance legislation.\(^9\) However, schools in Richmond remained open during this time, with a few token transfers by the Pupil Placement Board of black students to white schools.

Oliver Hill, already with several civil rights victories under his belt, was a leading


advocates for desegregation in Virginia. Represented by Hill, a group of black parents led by Alice Calloway decided to sue over the constitutionality of the Pupil Placement Board. Hill was able to get a two-week stay in September of 1957 on enforcement of the pupil placement system in Richmond. Citing the welfare of the children, Judge Sterling Hutcheson extended the restraining order against Richmond pupil placement for the rest of the school year.\(^\text{10}\)

The Calloway family challenged the placement board and claimed their home was closer to the white school than to the black school. The placement board hired an engineering firm to use surveyor’s chains, and on their hands and knees they measured the exact distance from the Calloway’s house to the two schools. They found that the Calloways lived 380 feet closer to the black school than to the white one, and the placement board reaffirmed their decision to deny the transfer for Calloway’s son.\(^\text{11}\)

Hill recalled this process in a 2000 interview:

They had people down on their knees, and this appeared in the newspaper, a picture of them measuring with a tape measure the number of inches, the difference between…their house and the school down on Lee Street, the segregated school, and the difference between the school on Brooklyn Park. I’m trying to show you the ridiculous nonsense they went through [to prevent integration].\(^\text{12}\)

While the unsuccessful 1957 challenge led by Hill made some waves, the first major challenge to Richmond’s Pupil Placement Board came in the summer of 1958, when six black children applied for admission into all-white schools. The applications of

\(^{10}\) Ibid., 23-24.

\(^{11}\) Pratt, “Promise,” 419-420.

\(^{12}\) Hill, Interview.
course had to go through the Pupil Placement Board, and since Virginia law dictated that
the enrollment of a black student in a white school would mean the closing of the school,
all six students were denied admission.\textsuperscript{13} The parents of the six children sued on
September 2, 1958, seeking an injunction against the Richmond school board’s regulating
school attendance based on race. The plaintiffs’ attorneys, Henry Marsh and Samuel
Tucker, argued that black students lived closer to white schools, but the Richmond school
board responded that it had no jurisdiction over the state’s Pupil Placement Board.\textsuperscript{14}
Tucker and Marsh responded by arguing that the Pupil Placement Board was itself
unconstitutional.

The case, which became \textit{Warden et al. v. The School Board of the City of
Richmond, Virginia, et al.} was not decided until July 5, 1961, when the District Court
ordered that the one remaining school-aged plaintiff be transferred from the black school
located five miles from her home to the white school in her neighborhood. However, the
court denied further relief for other black students, stating clearly that the student was
admitted as an individual, not as a class.\textsuperscript{15}

\begin{footnotes}
\item\textsuperscript{13} Pratt, \textit{Color}, 24.
\item\textsuperscript{14} Pratt, “Promise,” 417.
\item\textsuperscript{15} Bradley v. the School Board of the City of Richmond, 317 F2d 429, footnote 3 (1963).
\end{footnotes}
In the meantime, the three members of the Pupil Placement Board announced their intention to resign June 1, 1960. When the three new appointees took their places in August, they broke tradition by voluntarily assigning two black children to white schools in Richmond. This was the first time the board approved the admission of a black student into a white school. Despite this change, the pace of integration remained slow. By September of 1960, of the 204,000 black students in the state, fewer than 170 were enrolled in white schools. In fact, historian Robert Pratt argues it was this “tokenism” that kept desegregation to a minimum by avoiding direct intervention.

Virginia Crockford, a member of the Pupil Placement Board from 1962 to 1972, later spoke out saying she felt the placement board was a ploy “to buy time”. However, the board’s only black member, Booker T. Bradshaw, who served from 1953 to 1965, felt blacks would make more progress adopting a gradual approach rather than a militant one. Either way, there was no significant desegregation in Richmond under the Pupil Placement Board.

**Massive Resistance**

The Massive Resistance doctrine was driven in large part by two Virginians, Senator Harry F. Byrd Sr. and James Kilpatrick, editor of the *Richmond News Leader*.

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16 Pratt, “Promise,” 418.
18 Pratt, “Promise,” 419.
20 Pratt, “Promise,” 422.
After the *Brown* decision, Byrd became a promoter of the Southern Manifesto and a major architect of a strategy called Massive Resistance, a group of laws aimed at protecting segregation in public education.\(^{21}\) The 1956 Southern Manifesto was a promise to uphold segregation signed by the entire Virginia Congressional delegation, along with almost all of the Southern Democrats in Congress. The signatories vowed to use all means and methods available to preserve segregation in public education.\(^{22}\)

Harry Byrd’s resistance to school desegregation was very significant in that he and his political machine all but ran the state of Virginia. Born in 1887 in Winchester, Virginia, Byrd began his career as a newspaper reporter, but at a young age became involved in state politics. Elected a state senator in 1915, he gained popularity for his frugality when it came to government spending. He was elected governor in 1925 at the age of thirty-eight.\(^{23}\) After a term as governor, Byrd was elected to the United States Senate from Virginia in 1933, but did not lose his grip on the state’s political scene.

Young politicians who aspired to higher office followed Byrd’s directives about when to run and for what position, and any deviance generally meant defeat at the polls. Moreover, the Byrd organization gained a reputation among Virginia voters as being


honest and forthright, further strengthening an already-firm grip.\textsuperscript{24}

In addition to Byrd’s political power, the Massive Resistance movement had much editorial support in Southern newspapers. James Kilpatrick of the \textit{Richmond News Leader} was perhaps the most outspoken. As historian John Jeffries noted, “If Harry Byrd was the political impresario of massive resistance, James Jackson Kilpatrick was the theoretician.”\textsuperscript{25}

Kilpatrick was only thirty-one when he became editor of the \textit{News Leader}, and was a fervent segregationist.\textsuperscript{26} Shortly after the \textit{Brown} decision, Kilpatrick denounced the Supreme Court and asserted the states’ right of “interposition”, by which he meant the rights of states to protect their own interests by disregarding federal court decisions.\textsuperscript{27} The interposition doctrine revived by Kilpatrick was originally championed by John C. Calhoun in the 1830s. Calhoun used the idea as a rallying point in his campaign for states’ rights prior to the Civil War. Senator Byrd echoed these concerns of interposition, calling \textit{Brown} the “most serious blow that has been struck against the rights of the States.”\textsuperscript{28}

While Kilpatrick’s argument did not hold much legal weight, it was very popular. Throughout 1955 and 1956, Kilpatrick espoused his interposition ideas, even collecting

\begin{footnotesize}
\textsuperscript{24} Wilkinson, \textit{Byrd}, 30.

\textsuperscript{25} John C. Jeffries, Jr., \textit{Justice Lewis F. Powell, Jr.} (New York: Charles Scribner’s Sons, 1994), 137.

\textsuperscript{26} Jeffries, \textit{Powell}, 137.

\textsuperscript{27} Lassiter and Lewis, \textit{Moderates’ Dilemma}, 6-7.

\textsuperscript{28} Pratt, \textit{Color}, 1-2.
\end{footnotesize}
his editorials into a pamphlet sent to leaders across the South. During this time, five states passed resolutions asserting their sovereignty, including Virginia on February 1, 1956.29

The mainstream newspapers were effective in vocalizing the arguments of the Massive Resistance movement. Decades later, Thurgood Marshall recalled of those years after *Brown* that:

> We put some trust in the decency of man…we assumed that after a short period of time of one to five years the states would give in. We did not, however, give enough credence to the two Richmond newspapers, the *Richmond Times-Dispatch* and the other one [*News Leader]*…who were determined that they would build up the type of opposition that would prevent the states from voluntarily going along.30

Despite the vocal support for the Massive Resistance movement, there was some public support for integration. As noted by Matthew Lassiter and Andrew Lewis, editors of a book on Massive Resistance, “white moderates…eventually mounted a formidable challenge to Massive Resistance polices, but only after court orders obtained by the National Association for the Advancement of Colored People triggered the school-closing laws in 1958.” The shutting down of public schools was simply more than many moderates could tolerate.31

Indeed, from 1958-59, a pro-public education movement began to challenge Massive Resistance. While courts were able to rule school closing laws unconstitutional,

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they struggled to stop Virginia from directing funds away from public education and toward state-run segregated private schools. This funding ploy was eventually curbed more by a citizen’s movement then by the courts.32

The business community, particularly in Richmond, was also key to the opposition to Massive Resistance. In 1955, at the behest of state senator Eugene Sydnor of Richmond, the state legislature commissioned a study of the business climate in Virginia. Findings indicated that the state’s industrial development was stagnant, in part due to the turbulent climate surrounding public education. It was at this time that ninety of the state’s top business leaders formed the Virginia Industrialization Group. In December of 1958, this group met with Governor Almond and expressed their concern that school closings were hurting the state economically.33

Growing opposition to Massive Resistance was particularly evident in 1959 when on January 1, approximately 1,000 people (backed by groups such as the NAACP, CORE, and the SCLC) marched on Richmond to protest against Massive Resistance.34 Discouragingly, in March of that same year, five times that number marched on the capital in support of Massive Resistance.35

Lewis Powell

One central – but consciously low-profile – figure in the turmoil surrounding


33 Hershman, Moderate’s Dilemma, 112.

34 Ibid., 113.

35 Ibid., 130.
Richmond’s schools during the Massive Resistance era was Lewis Powell, then president of the Richmond School Board, and later Supreme Court Justice of the United States. Powell is often viewed as having resisted some of the pressure from Byrd and others; though the schools during his term saw little integration, they did remain more stable than in other parts of the state.

Powell, a well-known lawyer in Richmond by this time, was appointed to the local school board in 1950 to fill a vacancy, despite calls from the black community for the mayor to fill the seat with a minority representative. Interestingly, Richmond’s black newspaper, the *Afro-American*, petitioned the mayor to appoint Oliver Hill. Instead, it was another three years until a black member was appointed to the school board. Powell was elevated to chairman in 1952 and remained in that position until 1961.\(^{36}\)

His tenure on the Richmond school board coincided with court-ordered desegregation all over the South. Many looked to Powell to keep peace in the district, especially in light of what was happening in places like Prince Edward County, Virginia, where public schools were closed by the school board from 1959-1964 in resistance to integration.\(^{37}\)

Though not born into the elite class, Powell ascended into the upper-crust of Richmond. His position as such made him an even more interesting character: a privileged, white Southerner charged with desegregating the school system in Richmond, and later a voice of compromise on the United State Supreme Court.

\(^{36}\) Pratt, *Color*, 17-18.

When discussing desegregation issues later in his life, Powell admitted to being a product of his conservative Southern upbringing. “I’m ashamed to say that I never questioned segregation until the Supreme Court decided that case [Brown],” Powell said in a 1986 interview. “Plessy was the law of the land…and that was the way of life. I don’t honestly think anybody could say that I was a racist. But I did accept the society in which I was born and raised, and I’m not proud of that.”

In the wake of the Brown decision, the Richmond school board decided that they would not discuss desegregation in public meetings to keep from inflaming the community, and that members would not make individual public statements on the matter. Powell adhered to this policy even during private debates among the city council in 1956 regarding his reappointment. Some thought Powell should be questioned on his desegregation position, but he kept quiet and his supporters worked to ensure there would be no public questioning. He was unanimously confirmed for another five-year term quietly and without any public discussion.

Powell’s silence on the issue may be attributed in part to the position in which he found himself as a member of the Richmond elite trying to hold together public education in the city. Powell was friends with Senator Harry Byrd and admired his fiscal conservatism, but disagreed with him over the issue of Massive Resistance.

Despite his friendship with Byrd and other members of the elite power structure, Powell spoke out against the doctrine, a rare occurrence for him. He believed the

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38 Pratt, Color, 34.

39 Pratt, “Promise,” 423.
resistance to integration would be a hardship to both white and black students. Powell even went to Washington to persuade Byrd to abandon his position on Massive Resistance, and publicly debated with Richmond newspaper editor James Kilpatrick on the topic.  

On January 16, 1956, Powell and Kilpatrick were in attendance at a meeting of the Forum Club, an elite Richmond society. Though there is no written account of the exchange, by eyewitness accounts it is known that Powell and Kilpatrick went toe to toe on a proposal of interposition before the State Assembly, drafted by Kilpatrick. By all accounts, Powell eloquently and convincingly trounced Kilpatrick in the debate.

In terms of Kilpatrick’s doctrine of interposition, Powell felt the matter had been settled with the Civil War. Despite his efforts, Powell was largely unsuccessful in convincing segregationists to change their minds. However, Powell was a member of the Virginia Industrialization Group, the aforementioned alliance of business, professional and civil leaders who worked quietly to end segregation.

Powell organized Richmond business leaders and asked them to consider how Massive Resistance would hurt the state. The *Norfolk Virginian-Pilot* years later noted that it was “possible Mr. Powell’s outstanding contribution to Virginia was his leadership in the quiet sabotage by a business-industrial-professional group of Senator Byrd’s Massive Resistance.”

During a tenure otherwise characterized by silence on the issue,

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41 Ibid., 145-146.

42 Pratt, “Promise,” 424.

these actions by Powell sent a clear message, and the Massive Resistance tactic was eventually abandoned.\footnote{Pratt, \textit{Color}, 34.}

While his views on integration were not always discussed publicly, Powell did make it clear that his main concern as chairman of the school board was to keep Richmond’s public schools open. He did not want them to suffer a similar fate as the shutdown of public schools in Prince Edward County. Despite his protection of public education, his school board record is far from spotless. Powell told constituents in 1959 that, “public education will be continued in our city- although every proper effort will be made to minimize the extent of integration when it comes.”\footnote{Pratt, \textit{Color}, 13.}

During Powell’s tenure on the school board, as Powell biographer John Jeffries notes, “school segregation in Richmond remained virtually complete.” Richmond did not admit black children to white schools until 1960. In 1961, when Powell was appointed to the State Board of Education, only two of Richmond’s 23,000 black children attended school with white children.\footnote{Jeffries, \textit{Powell}, 140-141.}

In fact, the school board made no earnest effort to integrate schools, as the Fourth Circuit Court of Appeals found in \textit{Bradley v. School Board of the City of Richmond}. This case, discussed in detail below, was filed by eleven black parents in 1961 and brought a class-action suit against the school board, claiming the board operated dual attendance zones. The opinion of the Fourth Circuit, announced in 1962, scolded the Richmond
board:

Notwithstanding the fact that the Pupil Placement Board assigns pupils to various Richmond schools without recommendation of the local officials, we do not believe the City School Board can disavow all responsibility for the maintenance of the discriminatory system which has apparently undergone no basic change since its adoption.\(^\text{47}\)

By the time the Fourth Circuit announced its decision in *Bradley*, Powell was no longer chairman of the Richmond school board. He had been elected to the Virginia State Board of Education, where his term there showed no more movement toward desegregation than his local service. As Jeffries notes, “Powell never did more than necessary to facilitate desegregation. He never took a leading role. He never spoke out against foot-dragging and gradualism.”\(^\text{48}\)

Powell did speak out on busing as a means of desegregation when he was the principal author of an amicus brief on behalf of Richmond and Norfolk in the 1971 case of *Swann v. Charlotte-Mecklenburg Board of Education*. Powell’s brief argued that the constitutional objective must be considered. If the objective was racial balance, then busing was an appropriate measure. However, if quality education was the top priority, then busing harmed children by costing school districts a lot of money and burdening children with long commutes.\(^\text{49}\) Though busing was approved by the Court as a means to bring about integration, Powell’s argument illustrated what seemed to be his overriding concern in school race cases: preserving quality public education with little burden to

\(^{47}\) Pratt, *Color*, 31.


\(^{49}\) Ibid., 285.
students.

The combination of Powell’s moderation and Hill and his colleagues’ aggressive pursuit of challenging Massive Resistance legislation helped keep Richmond schools open during the crisis of the latter half of the 1950s. While segregation remained intact during this time, Richmond schools did remain stable in comparison to other districts which shut rather than integrate. Furthermore, by the dawn of the new decade, Massive Resistance legislation had largely been declared unconstitutional.

End of Massive Resistance

The end of Massive Resistance came fairly quickly, but left a long legacy. On January 19, 1959, the Virginia Supreme Court declared in the case of Harrison v. Day that the school closings under Massive Resistance legislation were unconstitutional. The court found that closing the schools violated section 129 of Virginia’s State Constitution, which required the state to "maintain an efficient system of public free schools throughout the State." Nine days later, Governor Almond made emergency plans to reopen schools, and appointed a commission to recommend a more permanent plan. Massive Resistance was legally impotent, and effectively dead.

Governor Almond’s reversal of opinion showed a deep crack in the Byrd organization. On the day after the Harrison v. Day ruling, Almond went on television and made an impassioned argument supporting Massive Resistance. In his speech, he promised that “now and hereafter, as governor of this state, I will not yield to that which I

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51 Hershman, Moderate’s Dilemma, 130-131.
know to be wrong and will destroy every semblance of education for thousands of the children of Virginia.”

However, within a week of his television appearance, Almond addressed the General Assembly of Virginia and called for a return to sanity. He then outlined his plans for ending the resistance, much to the shock of Byrd and his allies. When later reflecting on his televised speech, he said “I don’t know why I gave that damn speech. I saw the whole thing was crumbling. I was tired and distraught…and gave vent to my feelings, which never should have been done.” While Byrd futilely continued to call for resistance, Almond had ended the fight.

According to historian Robert Pratt, the Massive Resistance movement was short-lived due largely to the lack of unity among its leadership, and the doggedness of civil rights attorneys challenging segregation in the courts. Oliver Hill recalls that he and his colleagues “mobilized against the Court’s wishy-washy position regarding remedies which had encouraged segregationists to organize resistance to the Brown decision.” Without these continual challenges to the vague orders of Brown II, Hill concluded that Massive Resistance would have probably succeeded in delaying integration for a much longer period.

Interestingly, argues Pratt, it was token integration, like that practiced by Richmond, rather than total noncompliance that demonstrated the ineffectiveness of

52 Wilkinson, Byrd, 146.
53 Ibid., 146-147.
54 Hill, Big Bang, 174.
Massive Resistance and precipitated its demise. Unlike Prince Edward County, where refusal to integrate resulted in action by the federal courts to force compliance, Richmond’s gradualist approach to Brown succeeded in buying time and delaying integration by allowing a handful of students to transfer each year. The Pupil Placement Board and Freedom of Choice plans delayed significant integration until the courts finally ordered large-scale busing in 1970.  

In Pratt’s view, had the rest of the state of Virginia practiced the moderation adopted in Richmond, the resistance movement would have lasted much longer.

On the other side of the argument, despite the lack of integration during his tenure, school board chair Lewis Powell was committed to public education in Richmond and protected it from interruption. While in the long run permitting tokenism perhaps delayed integration, it provided a steadiness not found in most school districts in the state during that time. Powell took pride in the fact Richmond’s schools remained open during the crisis when many other school districts in the state closed rather than desegregate. From either angle, however, it cannot be disputed that meaningful integration still eluded most of the state’s schools.

*Bradley v. Richmond School Board*

The culmination of legal proceedings regarding school desegregation in Richmond was the case of *Bradley v. School Board of the City of Richmond*. This case, originating in 1961, would eventually reach the U.S. Supreme Court, where a final

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55 Pratt, “Promise,” 416.


57 Ibid., 35.
decision would not be rendered until 1974.

The case, as noted above, was brought on behalf of eleven black students who had been denied transfer from black to white schools by the Pupil Placement Board at the start of the 1961 school year. Aside from transfers, the plaintiffs also sought an injunction against the school board until a suitable desegregation plan was submitted to the court. While the district court agreed that the Pupil Placement Board unlawfully maintained dual attendance zones based on race, and ordered the students admitted to white schools, the plaintiffs appealed on the grounds that the ruling did not extend beyond these eleven students to all other black students in similar situations.\(^{58}\)

The Fourth Circuit Court of Appeals heard the case in early 1963, with Henry Marsh and Samuel Tucker representing the parents and students. The opinion examined the current state of desegregation efforts in Richmond at length. The court found that in the 1961-62 school year, thirty-seven black students attended previously all-white schools, and the next school year, an additional ninety black students were assigned to white schools, resulting in all formerly-white high schools having some black students. However, the court also found that these numbers were small in relation to the over 40,000 pupils in the Richmond public school system; moreover, the faculty of formerly white and black schools remained entirely segregated. In light of these facts, the Fourth Circuit agreed with the district court's ruling that Richmond was operating dual attendance zones.

The Circuit Court, however, did not agree with the earlier finding that the school

\(^{58}\) Ibid., 31.
board was making strides toward true desegregation. The court cited evidence that although twenty-two of the twenty-eight black schools were facing overcrowded conditions, and twenty-three of the twenty-six white schools were under-populated, the Pupil Placement Board had nonetheless only approved 127 transfers of black pupils to white schools by the 1962-63 school year. The Court also struck a blow at the Pupil Placement Board, finding that “there must be a responsibility devolving upon some agency for proper administration … we are of the opinion that it is primarily the duty of the School Board to eliminate the offending system.” With that, the court granted “an injunction against the continuation of the discriminatory system and practices which have been found to exist.”

The Court of Appeals remanded the case to the district court for a suitable desegregation plan. On March 16, 1964, the district court approved a “Freedom of Choice” plan permitting any student to attend the school of the pupil's or the parents' choice, limited only by capacity at the school to which transfer was sought. Tucker and Marsh were not satisfied by this plan because it put the burden of desegregation on parents and students, not school boards. However, on appeal the Fourth Circuit affirmed that the plan met the Board's constitutional obligations. Tucker and Marsh then appealed to the Supreme Court of the United States.

A significant event between the district court’s and the Fourth Circuit’s rulings on the Freedom of Choice plan was the passing of the Civil Rights Act of 1964 by Congress.


60 Bradley v. The School Board of the City of Richmond, 345 F.2d 310 (1965).
The Act allowed for discontinuation of government funds to noncompliant school districts.\textsuperscript{61} The tide seemed to be slowly turning in favor of school integration.

On November 15, 1965, the U.S. Supreme Court in \textit{Bradley} reversed the lower courts’ decisions on Freedom of Choice plans, finding that faculty segregation must be addressed, and remanded to the lower courts to address the problem. The district court finally approved a suitable Freedom of Choice plan in March of 1966, discussed below.\textsuperscript{62} Then, in 1966 the Pupil Placement Board was allowed to expire by the Virginia legislature. That same year, the Freedom of Choice plan went into effect in Richmond.\textsuperscript{63}

Under the Freedom of Choice plan, parents received a form before the 1966-67 school year asking them to indicate what school they would like their child to attend. Some black parents were intimidated and made to think it would be better to keep their children in black schools. Once the decision was made to transfer, it was binding. Some parents felt it was not worth the harassment their children might face, and in 1967 school administrators noticed the number of black students transferring to white schools was rapidly decreasing. Nonetheless, this Freedom of Choice plan remained in effect for almost five years.\textsuperscript{64}

\textit{Green v. New Kent County}

The methods of desegregation in Richmond changed sharply when the Supreme

\textsuperscript{61} Pratt, \textit{Color}, 37-38.

\textsuperscript{62} Pratt, “Promise,” 426-427.

\textsuperscript{63} Pratt, \textit{Color}, 40-41.

\textsuperscript{64} Pratt, “Promise,” 427-429.
Court handed down the decision in *Green v. County School Board of New Kent County* in May of 1968. This case was a direct challenge to the “Freedom of Choice” plans utilized by many school systems, including Richmond, to comply with *Brown* and *Brown II*. Under these plans, pupils were allowed to choose the school they wished to attend.

Lead attorneys for the plaintiffs were Samuel Tucker, by now a permanent fixture in desegregation challenges, and Jack Greenberg. The original suit was filed in 1965, seeking relief against the continued maintenance of a segregated school system in New Kent County, Virginia. The county only had two schools, one serving the 550 white students, and one serving the 740 black students. New Kent adopted a Freedom of Choice plan in 1965 to avoid losing their federal funds. An injunction was sought against the plan, but the plan was upheld by both the district and 4th Circuit Courts.

The Supreme Court, however, took into account the eleven years that had passed between *Brown* and the adoption of a Freedom of Choice plan, as well as the inability of the plan to spur any real change in the racial make up of the schools. Not one white child had elected to attend the black schools, and eighty-five percent of the black students still attended their all-black school. Based on these facts, the Court found that New Kent County’s Freedom of Choice plan was not a sufficient means of creating a unitary school system.

The Supreme Court was clear on two things in its ruling: “such delays are no longer tolerable,” and while the Court did not rule Freedom of Choice plans unconstitutional, the Justices emphasized that “utilizing a ‘Freedom of Choice’ plan is
As discussed in the next chapter, on March 10, 1970, attorneys in the Richmond desegregation case filed for relief in light of the *Green* decision, arguing Richmond’s Freedom of Choice plan had failed to achieve a unitary school system. For example, in 1970, there were 52,000 students in the Richmond school system. Of the seven high schools, three were one-hundred percent black, one was ninety-nine percent white, one was ninety-two percent white, and one was eighty-one percent white. Only one high school had less than an eighty percent majority of one race; that school was sixty-eight percent black.

However, there were segregating factors at work in Richmond beyond the control of just the school board. One major obstacle to desegregation in Richmond was heavily segregated housing. City officials admitted to the U.S. Department of Housing and Urban Development that the residential pattern in the city resulted in “total isolation and segregation of the Negro.” Before the Fair Housing Act of 1969, most subdivisions in Richmond had racially restrictive covenants.

Transportation posed another obstacle to desegregation. During the Freedom of Choice era, the city did not operate free school buses. Only a handful of black students lived close enough to walk to white schools, and any other black students wanting to transfer faced many transportation difficulties. Consequently, only the white schools located on border zones saw increased black enrollment; however, white parents often

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65 Green v. County School Board of New Kent County, 391 U.S. 430 (1968).

66 Pratt, “Promise,” 433.

67 Ibid., 430.
transferred their students to other white schools, resulting in resegregation. In fact, a study by a group of educators in early 1968 found that resegregation in many Richmond neighborhoods was already under way.\textsuperscript{68}

Thus, despite significant court victories by Hill and his colleagues, these factors, along with public opinion, proved to be massive obstacles to meaningful school desegregation in Richmond. The next chapter will discuss these challenges, the federal judge who fashioned the court-ordered remedy, and the difficultly – and dangers – of implementation.

\textsuperscript{68} Ibid., 431-432.
CHAPTER 5

DESEGREGATION AND BUSING CHALLENGES, 1968-1986:
JUDGE ROBERT MERHIGE AND THE END OF FREEDOM OF CHOICE

In light of the *Green* ruling, dockets around the country began to explode with challenges to other Freedom of Choice plans. In Richmond, Judge Robert Merhige was tasked with wading through all these challenges. When Merhige assumed the bench in August of 1967 after twenty-one years as an attorney, most Massive Resistance strategies had been ruled unconstitutional, and Freedom of Choice plans seemed to be holding steady.¹

Merhige recalled that when he was sworn in nine months before *Green*, he thought that resistance to desegregation was winding down. However, the day after the *Green* ruling was handed down, attorney Samuel Tucker, who had argued the plaintiffs’ case before the Supreme Court, appeared in Merhige’s chambers seeking a new hearing on Richmond’s Freedom of Choice plan in light of *Green*. Soon, requests had been made to reopen some forty school cases that had come through the district court.²

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Judge Robert Merhige

Merhige was catapulted onto the public stage as a symbol of the school desegregation battle in Richmond. Born in 1919, Merhige was the grandson of a Lebanese immigrant. He was raised in Merrick, Long Island and moved south to attend High Point College in North Carolina on a basketball and football scholarship. Merhige moved to Richmond in 1940 to be the assistant football coach at St Christopher’s school, assured by the coach who hired him that there was a law school nearby. He supported himself while attending law school at the University of Richmond, passing the bar at the end of his second year. Merhige joined the Army the day after the attacks on Pearl Harbor and served in the European theater.

After the war, Merhige returned to Richmond and started a law practice. His attorney’s fees combined with his real estate investments and the royalties from a textbook he authored made for a comfortable life. However, by 1964 he was burned out. He and his family retreated to Mallorca for six months before he returned to Richmond and his practice.

Shortly after his return, Congress created two new federal district judgeships in Virginia. Merhige claimed later in an interview that he did not expect to be appointed

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5 Darling, Part I, 9.
because he had no political background. However, on August 31, 1967, Merhige was sworn in as a federal judge for the Eastern District of Virginia.\(^6\)

As the Supreme Court had remanded *Green* to the district court for a solution in keeping with their ruling, Merhige was now tasked with integrating New Kent County’s schools. While New Kent was actually in the western division of the state, Merhige was handling the school cases there because the judge in that district cited a conflict of interest given his political career in Virginia during the Massive Resistance days.\(^7\)

*Green* was Merhige’s first involvement with a school case. He later wrote that the solution seemed simple to him: New Kent only had two schools, one white and one black. To desegregate, all they had to do was make one the grammar school and the other the high school.\(^8\)

\(^6\) Ibid., 10.

\(^7\) Robert Merhige, in a speech at the Judicial Conference for the 8th Circuit, available in his archives at the University of Richmond School of Law, Box 82, folder 27.

However, Merhige tried to accommodate the requests of the community for more time to renovate and prepare. In one case, the New Kent County school board asked for more time because the urinals would need to be lowered for younger students. Merhige was then required to conduct a fact finding mission on urinal height. Writing several years later, he recalled the wise words of Samuel Tucker, which he admitted he should have observed in the New Kent situation: “You don’t help the dog by cutting off a little of his tail at a time.”

The flood of cases continued. In light of the Green ruling, the case of Bradley v. Richmond School Board was reopened in 1970 to challenge Richmond’s Freedom of Choice plan. Bradley, as discussed in the previous chapter, had been in and out of the courts since 1961, when eleven parents originally sued to have Richmond’s schools desegregated.

The Richmond school board proposed at this time a new desegregation method utilizing “grade pairing,” meaning all the students, black and white, would go to one building for certain grades, and another building for other grades. However, under the previous Freedom of Choice plan, Richmond did not provide school buses for its students, which is in part why few students transferred during that time. Because of the lack of busing, the grade pairing plan proposed by the school board would only be feasible in areas where mostly-black schools and mostly-white schools were in close proximity.

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9 Ibid., 27.
10 Bacigal, May it Please, 62-63.
proximity, which was rare due to the extent of residential segregation.\textsuperscript{12} The city did not want to adopt a plan that including busing in large part because of the great expense it would incur.\textsuperscript{13} Without buses, the school pairing plan was a sham.

In June of 1970, Merhige ruled that the school board’s pairing plan was not acceptable, because it showed “no real hope for the dismantling of the dual school systems.” The board submitted a new plan that still included pairing, but also provided for a limited amount of busing. Merhige again felt it did not go far enough, but approved it on an temporary basis because the school year was about to begin. Classes began that August with some busing. However, nearly 5,000 white students were unaccounted for.\textsuperscript{14} Parents had either kept their children out of school, moved, or sent them to a private school.

Judge Merhige was growing increasingly frustrated with the pace of desegregation and began studying closely \textit{Swann v. Charlotte-Mecklenburg}, the busing case currently before the U.S. Supreme Court. This case dealt with the constitutionality of wide-spread busing to achieve integration.\textsuperscript{15}

Merhige recognized that the racial makeup of Richmond, white flight to the suburbs and segregated housing patterns meant more drastic measures would be needed

\textsuperscript{12} Pratt, \textit{Color}, 46.

\textsuperscript{13} Ibid., 57.

\textsuperscript{14} Ibid., 48-49.

to integrate the schools. Nearly 15,000 white pupils had left the school system since
desegregation began in 1960, while the number of black pupils had grown steadily.16

The school board and the plaintiffs continued to battle it out in court, proposing
and challenging different desegregation plans. On April 5, 1971, Merhige approved a
plan ordering student and teacher reassignment via city-wide busing, with the goal of
achieving a black-white ratio in each school equal to that of the entire school system. The
busing would extend to all pupils, including kindergarteners and elementary school
students.17 Two weeks after the Richmond ruling, Judge Merhige’s decision was
solidified when on April 20, 1971, the Supreme Court in Swann found that it was within
the courts’ power to require busing in order to dismantle a segregated school system.18 In
the 1971-72 school year, approximately 21,000 students were bused throughout
Richmond under the new plan.19

On the Swann decision, Merhige later reflected:

Swann not only implemented Green, it indeed set out guidelines for so-called
busing cases – in short, a finding of constitutional violation warrants an
appropriate remedy….Swann, however, was not the panacea for trial and
appellate judges which at first blush it appeared to be. How, for example, were we
to define the constitutional violation of which the court spoke?20

16 “Mixing City, Suburban Schools – Key Ruling by a U.S. Court,” U.S. News and World Report,

17 Pratt, Promise, 434-435.


19 Pratt, Color, 57.

20 Robert Merhige, in a speech at the Judicial Conference for the 8th Circuit, available in his
archives at the University of Richmond School of Law, Box 82, folder 27.
Within six months of Merhige’s initial busing order, black plaintiffs filed suit to have surrounding Henrico and Chesterfield counties’ schools merged with Richmond’s school system. The merger would result in a combined school district with a student population of over 100,000, approximately one third of which would be black.\(^{21}\) There was immediate outcry from the state’s Attorney General’s office, local PTAs and neighborhood groups, and many others.\(^{22}\)

Just months earlier, Merhige had ruled on a redistricting case. The city of Emporia, Virginia sought to withdraw its schools from the rest of the Greenville County system, which would result in the city schools being mostly white and the remaining county schools being mostly black. Merhige ruled that in addition to the problem this redistricting would create for racial balance in the system, Emporia had not invoked its right to create its own school system until faced with court orders calling for real desegregation. He enjoined the city from withdrawing from the county school system. The Fourth Circuit reversed his ruling, finding Emporia’s purpose to be “benign.” However, the U.S. Supreme Court upheld Merhige’s original decision. The Court found that Emporia’s withdrawal would have a negative effect on the already-issued order to desegregate, and therefore Emporia must desegregate as part of the original district.\(^{23}\)

The Emporia opinion issued by the Supreme Court represented a divide among the Justices. All four Nixon appointees dissented, including Lewis Powell. Chief Justice

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\(^{21}\) “Mixing City, Suburban Schools,” 30.

\(^{22}\) Pratt, *Promise*, 443.

Burger wrote in the dissent that the district court’s power did not extend across city and county lines. A more conservative Supreme Court did not bode well for Merhige in the Richmond consolidation case that would come.  

On January 10, 1972, Merhige ruled in favor of the plaintiffs in Richmond, ordering the merger of the city’s school system with that of Henrico and Chesterfield counties. In this ruling, Merhige found that the heavily black system in Richmond and the heavily white school system in the suburbs were the result of discriminatory actions at both the state and local levels, and was therefore unconstitutional. He reasoned that not even wide-spread busing within Richmond would be enough to rectify the situation. He found it necessary to take steps to achieve the greatest possible amount of school integration.

Richmond’s population was then seventy percent black while the two suburban counties, Henrico and Chesterfield, were ninety-one percent white. The proposed goal of the merger was for black students to make up twenty to forty percent of each school’s population. An official estimate indicated that 78,000 children would have to be bused to achieve this result. Merhige also ruled that the teaching staff would have to integrate to mirror the district’s ratio of black to white students.

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24 Bacigal, 56.
25 Pratt, Promise, 444.
26 “Mixing City, Suburban Schools,” 29.
27 Ibid., 30.
Merhige’s ruling marked the first time that a federal court had ordered the merger of city and suburban school districts for the purpose of racial integration (though similar cases were working their way through the courts in Detroit and Indianapolis).²⁸ ²⁹

There was great protest over Merhige’s ruling, and appeals were immediately filed. On June 5, 1972, the Fourth Circuit Court of Appeals agreed with Henrico and Chesterfield counties that their borders had not been established to promote segregation, and ruled 5-1 that a district judge could not compel a state to “restructure its internal government for the purpose of achieving a racial balance.” Merhige’s decision was reversed, and the resulting appeal by the attorneys for the plaintiffs made its way to the Supreme Court.³⁰

On May 21, 1973, the decision of the Circuit Court to strike down Merhige’s merger order was upheld by the U.S. Supreme Court in Richmond School Board v. Board of Education. The Court split 4-4 on the decision, thereby leaving the Fourth Circuit’s decision in place. The tie-breaking ninth vote belonged to none other than Justice Lewis Powell, former chairman of the Richmond school board, who had recused himself citing conflict of interest on that ground.³¹

Despite the ultimate failure of the merger, Merhige’s ruling sparked enormous opposition in the state. Once busing became an option for desegregation, white flight to


³⁰ Bradley v. School Board of City of Richmond Virginia, 462 F.2d 1058 (1972).

the suburbs became an enormous factor in the racial makeup of the area. From the *Brown* ruling in 1954 to 1971, the percentage of whites in Richmond public schools dropped from fifty-seven percent to thirty-one percent, while increasing by 250 percent in Henrico and Chesterfield counties.\(^{32}\) However, once busing was introduced, the reaction among whites in Richmond was dramatic – by 1976, whites composed less than twenty percent of the student population.\(^{33}\) In just five years, one of every three white children had fled the system. Many parents kept children home from school as an immediate protest, and later many moved out of Richmond or sent their children to private schools.\(^{34}\)

The declining enrollment of white students was an indicator of public opinion on Merhige and busing to remedy segregation. Teacher attrition was also a problem. Some chose early retirement or took lower-paying jobs in private schools rather than work in integrated public schools.\(^{35}\)

The press was also generally unfavorable toward Merhige and busing. The *Richmond News Leader* ran an editorial that described his opinion as “a document in which one searches almost in vain for a nugget of good sense….The public cannot take much more of this; neither can public education.”\(^{36}\) After the initial merger ruling, several

\(^{32}\) Bacigal, *May it Please*, 65.


\(^{34}\) “Mixing City, Suburban Schools,” 30.

\(^{35}\) Pratt, *Promise*, 441.

\(^{36}\) “Mixing City, Suburban Schools,” 30.
thousand white residents rode in a motorcade of 3,261 cars, which spanned 108 miles, from Richmond to Washington to protest.\footnote{Pratt, \textit{Promise}, 445.}

In addition to this demographic and public outcry, personal threats were made against Judge Merhige and his family with regularity. Merhige recalled that anywhere from eight to eleven U.S. Marshals were assigned to guard his home around the clock. On at least two occasions, authorities became aware of assassination attempts. The Ku Klux Klan marched around his home every Sunday for several months. As noted in the Prologue, another group would circle the courthouse with a hearse called “Merhige’s funeral dirge.” His dog was shot to death, and the guest house on his property mysteriously burned down.\footnote{Merhige, \textit{Judge Remembers}, 28.} The threats were such that his wife and son left the country for a time. Merhige later admitted he considered resigning during this controversy.\footnote{Bacigal, \textit{May it Please}. 60-61.}

Merhige got tips on handling the harassment from Oliver Hill, who once woke to find a cross burning in his front yard – Hill simply notified the fire department and went back to sleep. Both Hill and Merhige kept their numbers listed in the phone book, a message of sorts that they would not be intimidated.\footnote{Ibid., 62.} Merhige admitted he got some perverse satisfaction out of composing a form letter to respond to the hundreds of threatening letters he received, thanking citizens for their “kind wishes.”\footnote{Merhige, \textit{Judge Remembers}, 28.}
Merhige gave several interviews and speeches surrounding the busing debates, as well as writing a few recollections of the period. He rejected the term “judicial activism,” which was often applied by critics to his rulings. He insisted he was “just somebody doing his job, that’s all.” 42

He was clear in his interpretation of the Constitution and the role of the courts. In an interview for Litigation Magazine, Merhige described his take on judicial independence: “The Constitution intended for Article III judges to be independent, and that’s what I’ve tried to be…we’re not free to ignore the law as enunciated by our higher court – to do so erroneously is one thing – to do so deliberately is a misconception of independence.” 43

As for his personal history with civil rights, Merhige, much like Lewis Powell, admitted that he was not always concerned with the issue. “I had not been a crusader for civil rights during my twenty plus years as a practicing attorney,” he wrote in a 1992 essay in the Washington and Lee Law Review. “I am embarrassed to admit that before my nomination to the bench, I had been too busy with my own life and the demands of my busy trial schedule to focus on the problems of racial discrimination.” 44 However, he was careful to point out that he kept personal feelings separate from his legal work. In one

42 Darling, “Enigma (Part I),” 8.

43 Judge Robert Merhige, interview by Christopher T. Lutz for Litigation Magazine, January 1986, transcript found in Merhige’s personal correspondence at the University of Richmond School of Law.

44 Merhige, Judge Remembers, 23.
interview, Merhige noted about his previous lack of attention to civil rights that “that’s something you make up for personally. You don’t use the court to do it.”^45

Merhige was often frustrated by the lack of understanding on the part of the public that criticized him. He reflected in one interview how people seemed to think desegregation decisions should be made by consensus. “Thank God and the Constitution, that our system doesn’t function in that manner,” he remarked.^46

Criticism of Merhige during his tenure, particularly during the busing debates, was plentiful. One city councilman at the time, Howard Carville, noted that “the power just went to his head. He only does what he does to get his name in the papers and get nationally recognized so that he can get on the Supreme Court.”^47 Virginia Delegate Edwin Ragsdale called for Merhige’s impeachment during the busing debate, and was ominously quoted as having said “if the people can’t rid themselves of Merhige through the law, they may start looking outside the law for the answer.”^48

However, the judge also had many defenders. Michael Smith, a former law clerk, pointed to ignorance as the reason for much public outrage. “People don’t seem to understand that a judge can’t go out and pick the cases he wants to decide on,” Smith noted. Richmond mayor Thomas Bliley noted in 1973 that, “I don’t agree with most of Merhige’s decisions, but he calls them as he sees them. I don’t think Merhige is trying to


^46 Merhige, interview.


be a super-mayor, or an attorney general or a hero, he’s just trying to be a judge.” Bliley went on to point out that Merhige had become a symbol for change, and people tend to not like change, no matter how necessary it is.49

Samuel Tucker remembered that Merhige always addressed black attorneys in court as “Mister,” as opposed to their first names as was customary at the time. He also always shook hands with opposing counsel, white or black. Tucker joked that Merhige “never qualified for an ‘honorary Negro’ degree, but was seen as a friend to the black community.”50

Controversial or not, Merhige was certainly busy in the post-Green and Swann years. Records from 1973 showed that Merhige had a heavier caseload than any other federal district judge in the country.51 And despite the numerous challenges his rulings faced, of the forty-two school cases Merhige decided between 1967 and 1973, the Fourth Circuit only reversed two of his rulings. The Supreme Court in turn reversed one of the Fourth Circuit’s reversals, meaning only one of his rulings was ever overturned.52 That case, of course, was his Bradley decision to consolidate the districts in efforts to desegregate Richmond.

49 Ibid., 9.
50 Bacigal, May it Please, 77.
51 Darling, “Enigma (Part II),” 9.
52 Ibid., 10.
In a biography, Merhige concluded “I know the price of busing was high, but I don’t think there is any price too high to reach a society where everyone is viewed the way God intended, and the way the Constitution intended. Viewed and treated equally.”³⁵

The judge later summed up that the country is “still searching for a truly integrated system of education.”³⁴

Robert Merhige was undoubtedly a major player in the ongoing educational desegregation experiment. The progress stemming from his opinions was clouded by side effects like the resegregation of public schools. These effects will be discussed in the next chapter.

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³³ Bacigal, *May it Please*, 71.

In March of 1986 the Richmond School Board approved a neighborhood-based plan, ending cross-town busing. This came shortly after a federal appeals court approved the end of busing in Norfolk, Virginia.¹ Norfolk was the first school district to dismantle its desegregation busing plan.²

Norfolk

When busing officially ended in Norfolk at the start of the 1986 school year, twelve of the city’s elementary schools became seventy percent or more black, up from four under the busing plan. Concerned parents filed suit, believing the neighborhood school plan was a violation of the 14th Amendment. The district court, however, found that Norfolk had already achieved unitary status, and therefore the burden of proof would be on the plaintiffs to prove that Norfolk was operating a dual system.³

This declaration of unitary status became a significant issue in the case, though it had been made years earlier. In 1975, the courts had declared Norfolk a unitary school district at the request of the school board.⁴ Though at the time no one thought much of it,

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⁴ Eaton and Meldrum, Broken Promises, 117.
it greatly shaped the way the courts evaluated Norfolk’s plan for neighborhood schools, and later played a role in Richmond’s court battle over state funding to mitigate the lingering effects of segregation. This declaration that the district was now a unitary school system relieved the school board of its obligation to desegregate, and allowed courts to consider future pupil placement plans in a much different, and often more lenient, light.5

Henry Marsh, a veteran of Virginia civil rights litigation, was attorney for the Norfolk plaintiffs. He expressed his disbelief after the district court ruling approving the end of busing, saying that he could not believe that “America will return to segregation in 1986.” Their appeal to the Fourth Circuit, however, was unsuccessful, and the Supreme Court declined to hear the case, effectively ending mass busing in Norfolk.6

There are some interesting lessons from the Norfolk case. For example, many assumed busing was the cause of white flight, the term used to describe the loss or enrollment of white public school students, due to either moves to the suburbs or to enrollment in private schools. Despite this assumption, and while there were some immediate gains in white enrollment from about thirty-five percent to forty-two percent after busing ended, by 1993 the white enrollment in Norfolk was back down to thirty-seven percent.7

5 Ibid., 120.
7 Eaton and Meldrum, Broken Promises, 124-125.
Richmond

The Norfolk plan to move to neighborhood schools was similar in many ways to Richmond’s. The main difference between the two plans was that while the Norfolk plan substantially changed the racial makeup of public schools there, in Richmond the school system was already eighty-five percent black. When Judge Merhige approved the school board’s new pupil assignment plan, it prompted little public outcry.\(^8\) Ironically, it was the majority-black school board that pushed for the end of busing.\(^9\)

As discussed in the previous chapter, in the years after the major 1971 busing ruling, Richmond’s public school population saw great change. In addition to the white flight, by the mid 1970s, middle class blacks also began fleeing the Richmond public schools, while surrounding Henrico and Chesterfield counties’ black enrolments increased from about ten percent each to 26 and 14 percent, respectively, by 1990.\(^10\)

This flight from urban school districts was seen all across the country, though several studies from as early as 1953 into the 1970s indicated that the intensity of the reaction to the Brown decision was directly related to the proportion of black students in the school system.\(^11\)

Around the same time the Richmond school board ended busing, it sought state funds for programs to eliminate what it considered to be the lingering effects of


\(^10\) Pratt, “Promise,” 446.


One of the issues in the case was whether the Richmond schools had become a unitary system instead of a segregated dual system. In the 1986 ruling under appeal, Judge Merhige applied the test set forth in the *Green* case (discussed in the previous chapter), which examined whether segregation still existed with regard to faculty, staff, transportation, extracurricular activities, facilities, and pupil assignment. After finding no intentional segregation in any of these areas, Merhige concluded that Richmond was a unitary system.\(^\text{12}\) The school board argued that other factors, such as dropout and graduation rates and standardized test scores should be considered. Merhige found that because Richmond performed on par with the state schools as a whole, there was no evidence that prior segregation had not been remedied. In fact, Merhige noted that dropout rates fell four and a half percent between 1980 and 1983, even though the black student population grew by about two percent during the same period.

The Fourth Circuit also noted in the ruling that “the district judge has presided over this litigation for many, many years and has always exhibited great sensitivity to the rights of minority students…we give his findings and conclusion great deference.” They were, of course, referring to Judge Merhige. They upheld his ruling, finding no “vestiges

of state-mandated segregation” and concluding the state had upheld its constitutional obligation, thereby affirming the refusal of states funds for remedial programs.\textsuperscript{13}

Richmond Today

The civil rights struggle in Richmond’s public schools did not end with busing. The newest battleground is charter schools. The city’s first charter school, Patrick Henry School of Science and Arts, opened in August of 2010 for kindergarten through fifth grade.\textsuperscript{14} While Patrick Henry School’s website touts that it will be “THE public school that reflects the diversity of the city we live in,” and is open to any Richmond city child with no admissions criteria\textsuperscript{15}, opponents argue otherwise.

The NAACP has been fighting the adoption of charter schools in Richmond for many years. Virginia state director King Salim Khalfani referred to the push for charter schools as a “white takeover,” going on to describe it as “a nefarious battle being waged by a segment of the population to take back what was lost in the 1970s.”\textsuperscript{16}

This debate has been going on in Richmond for over fifteen years. From 1995 to 1998, the Virginia legislature repeatedly defeated efforts to create charter schools in the state. When a bill finally passed in 1998 allowing charter schools, it was restrictive in that local school boards were given oversight of the application process, and rejected

\textsuperscript{13} School Board of the City of Richmond v. Baliles, 829 F2d 1308, 1987.

\textsuperscript{14} Patrick Henry School of Science and Arts homepage, http://www.patrickhenrycharter.org/ (accessed July 22, 2010).

\textsuperscript{15} About Patrick Henry School of Science and Arts, “Patrick Henry School of Science and Arts,” http://www.patrickhenrycharter.org/aboutus_phssa.htm (accessed July 22, 2010).

applicants had no recourse given the lack of a clear application process.\footnote{17} Civil rights groups have argued that charter schools are a new form of private education, using tax dollars to provide a better education to some students but not others. They have also warned it would lead to the resegregation of public schools,\footnote{18} though that already seems to be the case in Richmond.

In light of competition from charter schools and the declining enrollment of middle and upper income students, in the summer of 2009 the Richmond public schools launched a $50,000 campaign to encourage city residents to consider the public schools for their children. Wife of then-Governor Tim Kaine, Anne Holton, led the charge along with Superintendent Yvonne Brandon. Interestingly, Holton and her siblings were among the first whites to attend formerly-black schools in Richmond after court-ordered desegregation in 1970, and after Holton graduated from Harvard Law in 1983, she clerked for Judge Robert Merhige.

While some middle-class families are enrolling their children in local schools, many still move to the suburbs or opt for private education. Currently, about two-thirds of the city's school-age children are enrolled in public schools as compared with three-quarters a decade ago. In a district where seventy-one percent of public school students


are eligible for free or reduced-price lunches, the issue may be class related as much as race driven.\textsuperscript{19}

According to figures from the U.S. Census Bureau, Richmond’s population in 2009 was just over 204,000, with forty percent of residents classified as non-Hispanic white, and fifty-two percent as black.\textsuperscript{20} The racial makeup of the Richmond public school system, with its 22,994 students in the 2009-2010 school year, is eighty-five percent black and just over eight percent white.\textsuperscript{21} Of the five high schools in the district, only Thomas Jefferson High, at sixteen percent white enrollment, has a white population of over six percent, which is the percentage at the next-highest white enrolled school.\textsuperscript{22}

As many of the wealthier students abandoned the public schools, academic performance began to lag. As early as 1978, thirty four percent of eighth graders failed to move to the ninth grade.\textsuperscript{23} Robert Pratt, a scholar of Virginia desegregation, asserts that sixteen years of delay through token integration after the \textit{Brown} decision meant that

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\textsuperscript{22} Greatschools.com, Thomas Jefferson High School, http://www.greatschools.org/cgi-bin/cs_compare/va/?level=h&area=d&compare_type=district&street=4100+W+Grace+St&city=Richmond &district=138&sortby=name&school_selected=1474&tab=ethnic, (accessed July 18, 2010). \\
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white parents has enrolled their children in private schools or moved to the suburbs before busing even began.\textsuperscript{24}

Desegregation in Richmond, as in many areas of the country, is largely seen as a failure. The loss of students with the means to move or attend private schools made busing and other desegregation efforts largely ineffective. While the courts have found that Richmond fulfilled its obligation to desegregate, many civil rights advocates feel public schools are still grossly unequal, though now the divide seems to be more between classes than races.

“Separate but equal” is dead in Richmond. The dream of a multiracial, unitary school system never came to life.

\textsuperscript{24} Pratt, “Promise,” 416.
EPILOGUE

A June 2010 poll commissioned by the Richmond Times-Dispatch found that, when asked whether promoting Richmond’s history as the capital of the Confederacy helps or hurts race relations, a larger percentage of blacks than whites answered that it has no effect at all. The same poll found that fifty-nine percent of whites and fifty-six percent of blacks rate race relations in the city as good or excellent, and two-thirds of both races agreed that race relations have improved in the past twenty years. However, not all was as positive. Two times as many blacks polled as whites felt job opportunities were better for whites, and significantly more blacks than whites felt the courts and police treated whites more fairly.¹

Despite these findings on racial attitudes, the racial makeup of the Richmond Public Schools at the start of the 2009 school year was eighty-five percent black.² Residential segregation in the city remains mostly intact as well, though there is some influx of young white professionals moving back into the city center. In Richmond as all over the nation, the public school debate has shifted from integration to improving student performance.

* * *

Oliver Hill remained active in the operations of his Richmond law firm until 1998. In 1999, he was awarded the Presidential Medal of Freedom, the nation’s highest


civilian honor, from President Bill Clinton. He died in 2007 at the age of 100.\textsuperscript{3}

In 1964, Spottswood Robinson was appointed by President Lyndon Johnson to the U.S. District Court for the District of Columbia, and in 1966 was elevated to the Court of Appeals. He retired from the bench in 1989, and died in 1998 at the age of 82.

Lewis Powell’s tenure on the Supreme Court from 1972 through 1987 earned him the reputation as a moderate. He was the swing vote in the 5-4 decision in\textit{ Regents of the University of California v. Bakke} case in 1978, in which the Court upheld affirmative action programs in higher education, so long as they were not quota-based.\textsuperscript{4} After his retirement, he sat on various Courts of Appeals around the country, and died in 1998 at the age of 90.

Thurgood Marshall, after engineering the NAACP’s legal strategy to challenge desegregation, was named as judge to the United States Court of Appeals for the Second Circuit by President Kennedy in 1961. In 1965, President Lyndon Johnson named Marshall Solicitor General of the United States, and appointed him to the Supreme Court in 1967. He served on the Court until retiring in 1991, and passed away in 1993 at the age of 84.\textsuperscript{5}

Robert Merhige retired from the bench in 1998 but remained active at the firm of Hunton and Williams until his death in 2005 at the age of 86. In his thirty-one years on the bench he became known for his speed and efficiency. He again gained notoriety in the

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1980s when he ruled on one of the largest corporate liability cases in history, the Dalkon Shield Case, which involved injury caused by an intrauterine contraceptive device and paid out nearly $3 billion to claimants. In the Washington Post obituary that ran at the time of his death, a quote from Merhige summed up his experience during the desegregation rulings: “I thought people would say, ‘We don't like the little S.O.B., but he's following the law,’” he said. “That didn't happen.”^6

These men were instrumental in shaping both the national desegregation campaign and overseeing the desegregation of Richmond public schools. While the goal of truly integrated schools in Richmond was never met, it was a hard-fought and noble battle.

BIBLIOGRAPHY


U.S. Census Bureau. ‘State and County Quick Facts.’


