

The Machinery of Massive Resistance
State Opposition to School Integration in Virginia

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1st Supreme Court justice: "The country must keep in step with the courts."

2nd Supreme Court justice: "That's just our trouble. Gov. Faubus is always one step ahead of us." ¹

While much of the attention paid to the civil rights movement focuses on the movement itself, the study of the reaction to the movement is easily as fascinating (if not as morally satisfying), offering an equal number of strong personalities, careful grandstanding, and creative circumlegal solutions to the problems posed by segregation and integration. An example is the reaction of the Virginia state government to the 1954 Supreme Court ruling in *Oliver Brown et al. v. Board of Education of Topeka, Shawnee County, Kansas, et al.* (hereafter referred to as *Brown v. Board*) which declared the then-commonplace practice of segregated schooling unconstitutional, but failed to give guidelines or deadlines for integration. The so-called "massive resistance" laws, under which any school that was integrated could immediately be closed by the governor, are in legal code as well as in execution among the most creative of the "solutions" to the challenge posed by *Brown v. Board*. In execution, however, the laws dramatically showcased their flaws, leading to potentially dangerous overcrowding in schools that remained open and pointing out cracks in the theoretically (and legally) solid wall of resistance in the state. The self-destruction of the "massive resistance" code may be in part attributable to the political vision of one of its architects, and its chief executor, Virginia Governor J. Lindsay Almond.

Prior to *Brown v. Board*, the machinery of segregation was deeply entrenched within Virginia state politics, and in fact was firmly enshrined in its constitution. Section 140 of the Commonwealth's constitution at the time of the *Brown v. Board* decision read, in its entirety, "White and colored children shall not be taught in the same school." This constitutional provision, passed during the "Jim Crow" era, was only one of many measures designed to embed segregation deeply in Commonwealth law. All such provisions relating to school segregation were

¹ Knebel, 4.

in theory overturned by *Brown v. Board*; as we shall see, the matter proved more difficult in practice.

Judging from Virginia news reports, the *Brown vs. Board* decision seems at first to have caught local and national Southern politicians by surprise. The rhetoric from many Virginian political figures, as expected, was thick: Senator Byrd claimed that the Commonwealth now faced “a crisis of the first magnitude,”² and asserted that the educational process in Virginia would be hindered by the court’s decision.³ He further evoked the same states’ rights rhetoric that would resurface in later integration battles when he called it “the most serious blow that has been struck against the rights of states in matters vitally affected their authority and welfare.”⁴

Although *Brown v. Board* was a “serious blow” in many respects, the most important feature of the decision from the point of view of its opponents was its failure to provide a time frame for integration. The original decision made no pretense of providing a plan for action; in fact, in the original decision the court called for further briefs concerning possible methods of implementation from all parties involved (including the U. S. Attorney General). The court’s indecision here opened a window of opportunity within which the Southern politicians could formulate their response.

Virginians, notwithstanding Senator Byrd’s example, were quick to recognize this fact. Virginia Governor Stanley, according to a news article at the time, “ruled out any precipitate summoning of the General Assembly into session because the immediacy of the situation was lessened by the court in deferring action on its decree to put the decision into effect.” He further noted, “This news today calls for cool heads, calm study and sound judgment ... I am sure the people of Virginia and their elected representatives can find the right solution.”⁵

² “‘Wait and See Policy In Va. Ends With Jolt,” 1.

³ An ironic statement, given the “hindrances” that Virginia’s response to *Brown vs. Board* imposed on the state’s educational process.

⁴ Hercher, 1.

⁵ “‘Wait And See’ Policy in Va. Ends With Jolt,” 1.

That solution was, as early as the earliest reports, already on the front pages of the newspapers. One report noted that “officials of some states already are on record as saying they will close the schools rather than permit them to be operated with Negro and white pupils in the same classrooms.”⁶ This foreshadowing of the “massive resistance” campaign shows the depth of the states’ commitment to segregation.

As evidenced by the time lag between the announcement of the *Brown v. Board* decision and its implementation, the commitment of the Federal government to desegregation was probably weaker than the South’s commitment to segregation. The Commonwealth was quick to take advantage of this weakness. Ten days after the announcement of the decision, Virginia’s State Education Board announced that it would continue its segregationist policies in the 1954–55 school year. Then-Attorney General J. Lindsay Almond, later governor of the Commonwealth, provided the key legal advice to the board by declaring the segregationist sections of the Virginia constitution intact until the Supreme Court ruled on the implementation of *Brown v. Board*. In a letter to the State Education Board, Almond wrote:

It is clearly manifest from the court’s opinion that it reserves judgment on the matter of final disposition of the cases before it until it could be further advised as to matters procedural relating to adjustment to the court’s opinion on the basic issue.⁷

Almond here points out the basic weakness in the *Brown v. Board* decision. In essence, by not providing a “procedural” framework for the solution of the thorny problem of integration, the court has not fully decided the case, preferring rather to “reserve judgment.” Almond recognized in that incomplete solution a weakness that allowed Virginia to proceed with its opposition to the plan until such time as the Court made up its mind. This critical delay on the part of the Court became the wedge that Virginia segregationists needed to drive to the heart of the *Brown* decision.

⁶ Atschull, 1.

⁷ “Education Board Rejects Integrated Schools By Fall,” 5.

Segregationists exploited the Supreme Court's hesitancy to the fullest, writing supplemental opinions regarding its implementation in letters such as Almond's and even in court decisions. In *Thompson v. Arlington County School Board*, the Commonwealth's court ruled,

The decisions of the United States Supreme Court do not compel the mixing of the different races in the public schools. No general reshuffling of the pupils of any school system has been commanded. The order of the court was simply that no child shall be denied admission to a school on the basis of race or color. Indeed, just as a child is not, through any form of compulsion or pressure, required to stay in a certain school or denied transfer to another school, because of his race or color, the school heads may allow the pupil, whether white or Negro, to go to the same school he would have attended in the absence of the ruling of the Supreme Court.⁸

As shown in the torturous circumlocutions of the above decision, the Commonwealth fully intended to exploit every shade of uncertainty in the Supreme Court's decision, regardless of the absurdity of the means used to exploit that uncertainty. In taking a strict constructivist interpretation of the Supreme Court's decision, the Commonwealth court prevented its spirit from being implemented without technically disobeying the ruling.

It is apparent from the actions of the Commonwealth's government that the governor (by this time, Almond himself) and his advisors were aware of the actions taken in opposition to integration in such places as Little Rock and Oxford. Virginia offered no "segregation today, segregation tomorrow, segregation forever" rhetoric, preferring to stay on the legal side of the grey border of noncompliance. Almond specifically ruled out strategies used in other Southern states that too flagrantly defied the federal government, such as interposition. A news report in 1958 reports that Almond "disclosed ... [that] he had rejected suggestions that the State utilize the [Central Pupil] Placement Act as a platform for the interposition of its police power against the authority of the federal government."⁹ Almond was canny enough to realize that the hoary doctrine of interposition would be insufficient to provide a legal defense against integrationists; what was needed was a more sophisticated legal strategy.

⁸ *Thompson v. Arlington County School Board (Va.)*.

⁹ "Norfolk, Arlington Defer School Opening As Clash With U. S. Near," 1.

The strategy of obeying the strict letter of the law, while defying its spirit, was seen again in at least one case of court-ordered integration. Prince Edward County, in Northern Virginia, was ordered to integrate beginning in 1965—some eight years after the case was brought to court. The delay could not have been tolerated under most court decisions, but clearly the perception of the federal government as reluctant to back up its decisions contributed heavily to this laxadaisical implementation. A commentator at the time observed that “such laggard compliance has been possible only because the Supreme Court ... allowed enforcement of its decision ‘with all deliberate speed’ and permitted federal district judges to regulate the timing according to local conditions.”¹⁰ The “deliberate speed” clause provided sufficient elasticity in the decision to allow state legislators and judges to construct convincing arguments that “local conditions” would not permit integration in the near future.

Virginia lawmakers were not satisfied merely to bend the conditions of *Brown v. Board* when they could actually break them. The 1956-57 report of the Virginia Attorney General commented on the planned construction of a segregated “Negro” grade school saying that “An expenditure of public funds for the construction ... would not constitute an *ultra vires* and illegal act because of the decision of the Supreme Court of the United States in *Brown v. Board of Education*.”¹¹ Despite the explicit prohibition of “separate but equal” education, the Commonwealth continued to construct separate schools for black and white pupils.

Some of the Commonwealth’s actions seemed calculated to provoke response, ironically echoing the civil rights movement’s strategy of creative tensions leading to negotiations. A newspaper report on the State Education Board’s refusal to implement *Brown v. Board* immediately noted that “the board flung the door open for a possible court test to determine whether the segregation provisions of Virginia’s constitution remain intact despite the Supreme Court decision” in *Brown v. Board*.¹² The Commonwealth was not merely dragging its feet in

¹⁰ McIntyre, 4.

¹¹ *Report of the Attorney General, 1956-57*, 229.

¹² “Education Board Rejects Integrated Schools By Fall,” 5.

integrating schools until such time as the task became less politically damaging; it was also actively opposing the decision, albeit less flagrantly than were some Deeper South states.

Decisions such as *Thompson v. Arlington County School Board* showed that, while Virginia's Commonwealth officials may have complied in words with *Brown v. Board*, in actions they were determined to keep as much of the machinery of segregation alive as possible. To this end, the Commonwealth formulated its policy of "massive resistance," consisting of a series of laws allowing the governor to close and take control of schools that had been integrated.

This action was based, in part, on sections of the Commonwealth's constitution that mandated the operation of "efficient" school systems. In the same report, the Attorney General opined that the Commonwealth was not obligated to fund, maintain, or condone a system of public schools that had been rendered "inefficient" by "forces over which the General Assembly has no control,"¹³ and further stated that "If the General Assembly finds that an efficient *integrated* system cannot in its legislative judgment be maintained, it is well within its province to appropriate public funds to that system which it deems to be efficient"¹⁴ (emphasis added). Needless to say, that second system would more than likely *not* be integrated.

The body of laws that constitute the "massive resistance" campaign used these opinions and others in interpreting the Commonwealth's constitution to provide a veil of legal justification for the action. Sections 22-188.3—22-188.15 and 22-188.30—22-188.49 of the Code of Virginia, constituting the legal implementation of "massive resistance," cite frequently the constitutional requirement of efficiency in school systems. The first section, §22-188.3, proclaims that

[As] a consequence of the decisions of the Supreme Court ... affecting the public school system, school authorities of ... the Commonwealth of Virginia will be faced with unprecedented obstacles if and when ordered to enroll white and colored children in the same public schools, and such enforced integration ... would destroy the efficiency of the school in which white and colored children were so enrolled...¹⁵
[emphasis added]

¹³ *Ibid*, p. 218.

¹⁴ *Ibid*, p. 122.

¹⁵ *Virginia School Laws*, §22-188.3.

Therefore, by exploiting the Commonwealth's constitutional requirement for efficiency in school operation, Virginia's General Assembly provided a mechanism by which integration could be directly fought. Section 22-188.5, the heart of the "massive resistance" laws, states after invoking the police powers of the Commonwealth that "the Commonwealth of Virginia assumes direct responsibility for the control of any school ... to which children of both races are assigned and enrolled by any school authorities acting voluntarily or under compulsion of any court order."¹⁶ In practice, and as codified in the same executive session that drafted the major sections of the code, the Governor took direct responsibility for closing schools that attempted to integrate under *Brown v. Board*.

No mechanism was left to chance in the implementation of massive resistance. For example, §22-188.8—22.188.9 provided for the reassignment of children and teachers in schools closed by the Commonwealth to "any available public schools," and authorized Commonwealth officials to make grants of tuition aid (for "nonsectarian private schools only") to children who could not be so reassigned.¹⁷ The meaning of *efficient* was itself codified, lest there be any doubt: "As used in this article an efficient system of elementary public schools ... means ... that system within each county, city or town in which no elementary school consists of a student body in which white and colored children are taught."¹⁸

Further sections of the code were apparently implemented in reaction to the occurrences at Central High in Little Rock, Arkansas, as they provide for the automatic closing of schools in case of military forces being deployed there:

...no public school shall be operated whenever any military forces or personnel are employed or used upon the order or direction of any federal authority for the purpose of policing its operation, or to prevent acts of violence or alleged acts of violence. The operation and supervision of the public schools is a right

¹⁶ *Ibid*, §22-188.5

¹⁷ The existence of such provisions may explain the unpopularity of former President Bush's proposal of "choice vouchers" for students as an alternative to court-ordered busing (another attempt to implement integration in public schools).

¹⁸ *Virginia School Law* § 22-188.31.

inherent in and subject only to the laws of the Commonwealth, and her sovereignty and dignity in this respect shall not be abrogated.¹⁹

Clearly Virginia had learned something from the example of Arkansas. This section and its companions, passed in 1958, gave the Governor the power to shut down schools at which there was any federal military presence, and suspended the powers and duties of school authorities, vesting them instead in the Governor. In a way, it is almost a shame that this provision of the law was never tested, for it would have led to a federal-state confrontation that, at least in legal dimensions, would have far outstripped the Little Rock case in magnitude. This law was nothing less than a declaration of revolt against the actions of the federal government in enforcing the *Brown v. Board* decision.

As it was, several Commonwealth school systems came perilously close to a showdown with the federal government, including school systems in Norfolk, Arlington, Charlottesville, Smithfield, and many other locales; when ordered to integrate, the affected schools were all closed under the “massive resistance” codes. The attendant chaos had severe detrimental effects on the educational atmosphere in the schools.

Even before the massive resistance laws were called into effect by the ruling of federal district courts that the school systems had to integrate, school openings in many systems were postponed due to uncertainty over the results of court deliberations.²⁰ The delay inconvenienced many, since the State Department of Education ordered them to make up the lost time by cutting short holidays, holding Saturday classes, or extending the semester into June as far as necessary (state law requires that school divisions hold classes 180 days per year or lose state funds).²¹

When the Norfolk high schools were closed, their teachers and pupils (as per state law §22-188.8) were reassigned to schools in neighboring Newport News, resulting in overcrowding and

¹⁹ *Ibid* § 22-188.41.

²⁰ “Norfolk, Arlington Defer School Openings As Clash With U. S. Near,” 1.

²¹ “Delayed Schools Ordered To Make Up On Lost Time,” 2.

changes of residency (the students were required to live in Newport News during the school week; fortunately many had relatives with whom they could board).²²

In the end, the implementation of massive resistance displayed the fatal flaws in its system. Despite admonitions from Richmond not to do so, local school boards such as that in Norfolk continued to assign black pupils to all-white schools, bringing about the automatic closure of the school. Almond had to issue a formal policy statement that he believed local school boards “could not properly be held in contempt by federal courts” for refusing to so assign black pupils, conceding that a citation for contempt would be within the powers of the federal court but claiming that “such action would be a usurpation of authority rightfully belonging to the state.”²³ Almond clearly was grasping at straws here; for an action to be within the federal court’s power and simultaneously constitute a “usurpation” of the state’s authority the entire federal-state power structure would be in jeopardy.²⁴

Furthermore, the fact that Almond felt the necessity to make such statements points to cracks in the solidarity of the “massive resistance” movement. Despite an explicit plea for unanimity of action throughout the state in the massive resistance code,²⁵ many local governments and courts were perceptibly at odds with the stated policy of resistance. Then-Mayor of Charlottesville, Thomas J. Michie, told city residents that the city government might be compelled “to take action which will be distasteful to every member of this council” (that is, to accept integration), and urged the citizens to accept that action “as good citizens should.” No preacher of resistance, Michie stated that council would be guided by “a determination to do everything in our power to preserve our public school system.”²⁶

Dissent from local government officials was only one of the problems that plagued the implementation of massive resistance. Norfolk’s policy of reassigning pupils to Newport News

²² “Norfolk Board Sends Va. Body 200 Applications,” 1.

²³ “Gov. Almond Advises Local School Board Not To Assign Negroes To White School; Declares No Federal Court Can Require Such Actions,” 1.

²⁴ As it, arguably, was shown to be many times during the civil rights struggle.

²⁵ See §22-188.4.

²⁶ “Norfolk, Arlington Defer School Openings As Clash With U. S. Near,” 2.

schools to make up for its closed schools nearly failed, thanks to a lawsuit brought by NAACP lawyer W. Hale Thompson that sought a temporary injunction to prevent the Newport News school board from barring black children from white schools. The suit, following a 1956 suit which had been left pending, sought to force the school board to draw up “a complete plan for desegregation of the public free schools of Newport News, Virginia.”²⁷

While the suit was unsuccessful—the temporary injunction was denied by the federal judge, who “showed a certain amount of vexation” at Thompson for his timing, asking testily, “Why did you wait until less than 24 hours before Newport News schools opened to file this new suit?”²⁸—Thompson made his point. Had he been successful in forcing integration in, and thereby closing, Newport News’s schools as well, the schools in the region would have become hopelessly overcrowded by pupils reassigned as a result of integration suits. Very likely the machinery of higher education in the region would have completely ground to a halt under increased pressure from “massive resistance” cases.

The whole machinery of the “massive resistance” laws, while riddled with inconsistencies and ultimately fatal flaws, was a quieter and more complete defense against integration than those posed by other southern states. It therefore seems as surprising now as it did then that the state itself sought a court ruling on the validity of the laws only days after they began to go into effect.²⁹ Almond’s motives are murky still. Did he, as reports at the time speculated, intend to “head off a similar challenge” from the NAACP to the massive resistance laws that was anticipated within the week?³⁰ Or did he come to the realization that the laws were destroying the educational system in the Commonwealth?

It seems most likely, from the language of Almond’s statements even as Commonwealth’s Attorney General, that he recognized defeat when he saw it. As early as his advice to the State Education Board in 1954, he hedged his bets, stating: “*Pending a final adjudication*, it is my

²⁷ Greiff, “NAACP...,” 1.

²⁸ Greiff, “Judge Hoffman...,” 1.

²⁹ “State Takes Initiative In Asking Ruling On Anti-Integration Laws; Puts Matter Before State Appeals Body,” 1.

³⁰ *Ibid.*

opinion that Section 140 of the constitution of Virginia and the statute of Virginia enacted thereto remain intact and unimpaired, imbued with full legal vitality and efficacy.”³¹ [emphasis added]. Clearly Almond recognized that the legal basis of the state’s resistance had a finite lifespan. This may explain his hesitancy in opposing the federal government more directly during his term as governor. It may also explain the fragility of the stated legal justifications for the “massive resistance” act; the declaration that an efficient school was a segregated one could never have been expected to hold up in court (as it, indeed, failed to do). At any rate, it seems certain that Almond’s recognition of segregation’s doom had a large role to play in the rise and fall of Virginia’s “massive resistance” statutes.

³¹ “Education Board Rejects Integrated Schools By Fall,” 5.

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