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The Promise of Equality: Reflections on the Post-Brown Era in Virginia

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THE PROMISE OF EQUALITY: REFLECTIONS ON THE POST-*BROWN* ERA IN VIRGINIA

*The Honorable Robert R. Merhige, Jr.**

I have been asked to author an article on the civil rights movement in Virginia in this anniversary year of the Supreme Court's decision in *Brown v. Board of Education*.[1] I am happy to write briefly as to those events of which I am familiar and as to my view of the civil rights movement in the Commonwealth.

The Supreme Court of the United States is and was the ultimate decider of the meaning of our Constitution. *Brown* centered on the meaning of the Fourteenth Amendment, defining that separate education was not equal education, as intended by the Constitution. The *Brown* decision, however, brought an ugly response from Virginia. Governor Thomas B. Stanley proposed to use "every legal means at [his] command to continue segregated schools."[2] Nonetheless, in 1957, Judge Walter Hoffman, in the case of *Atkins v. School Board,*[3] declared Virginia's massive resistance statutes unconstitutional.[4] In response to the *Atkins* decision, Harry F. Byrd, then the Senior United States Senator of Virginia, retorted that Judge Hoffman "has discredited his judi-

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* Special Counsel, Hunton & Williams, Richmond, Virginia. LL.B., 1942, University of Richmond School of Law. United States District Judge, 1967–98, Eastern District of Virginia. In more than thirty years on the federal bench, Judge Merhige presided over not only the pivotal civil rights cases discussed herein, but also over other landmark cases, including the A.H. Robins Dalkon Shield case, the Kepone pollution case, and the Westinghouse uranium litigation.

1. 347 U.S. 483 (1954).

2. BENJAMIN MUSE, VIRGINIA'S MASSIVE RESISTANCE 7 (1961). In a special session of the Virginia General Assembly, Governor Stanley rejected all other plans for Virginia's response to the *Brown* decision, proposing instead to withhold any state funding from any integrated school. JAMES W. ELY, JR., THE CRISIS OF CONSERVATIVE VIRGINIA: THE BYRD ORGANIZATION AND THE POLITICS OF MASSIVE RESISTANCE 44 (1976).

3. 148 F. Supp. 430 (E.D. Va. 1957).

4. *Id.* at 446.

cial robes by acting with such prejudice."[5] The Richmond News Leader referred to Judge Hoffman as a "third rate Republican politician."[6]

Likewise, the Governor's successor, J. Lindsay Almond, Jr., who took office in January 1958, was an advocate of the same position. In 1956, Governor Almond, then the Attorney General of Virginia, criticized the Supreme Court appointments of the preceding twenty years because they had, in his view, been made "without regard to fitness or ability."[7] He went on to say, "The appointive power has been desecrated and degraded to the extent of political depravity for the purpose of paying political debts or for the purpose of buttressing dubious political programs and consolidating the political support of minority pressure groups."[8]

As Governor, Almond pledged to "continue with never diminishing faith and confidence in the rightousness [sic] of [Virginia's] cause and the hope of ultimate vindication."[9] In his 1958 inaugural address, Almond declared:

> I find no area of compromise that might be usefully explored. To compromise means to integrate. . . . I cannot conceive such a thing as a 'little integration' any more than I can conceive a small avalanche or a modest holocaust. . . . To sanction any plan which would legalize the mixing of races in our schools would violate the clear and unmistakable mandate of the people. . . . This, I cannot do.[10]

Not all Virginians, regardless of color, supported the political attitudes of many of its leaders. Regrettably, however, by the fall of 1958, Governor Almond had closed high schools in Charlottesville, Norfolk, and Warren County, for the obvious purpose of

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5. ELY, *supra* note 2, at 191.

6. *Id.* "More than any other Virginia federal judge," Ely writes, "Hoffman represented everything the Byrd organization disliked about the national judiciary." *Id.*

7. J. Lindsay Almond, Jr., Address to the Judicial Conference of Virginia (May 4, 1956) (manuscript on file at the Virginia Historical Society); *see* ELY, *supra* note 2, at 4. Arguing for Virginia in *Brown*, J. Lindsay Almond warned the Supreme Court that desegregation "'would destroy the public school system of Virginia as we know it today.'" *Id.* (citing ARGUMENT: THE ORAL ARGUMENT BEFORE THE SUPREME COURT IN *BROWN V. BOARD OF EDUCATION OF TOPEKA*, 1952–1955, at 99 (Leon Freidman ed., 1969)).

8. J. Lindsay Almond, Jr., Address to the Judicial Conference of Virginia (May 4, 1956) (manuscript on file at the Virginia Historical Society).

9. J. Lindsay Almond, Jr., Address to the Virginia General Assembly (Jan. 28, 1959) (manuscript on file at the Virginia Historical Society).

10. J. Lindsay Almond, Jr., Inaugural Address to the Commonwealth and the Virginia General Assembly (Jan. 11, 1958) (manuscript on file at the Virginia Historical Society).

avoiding desegregation.[11] Schools for white children opened with state financial support under the Tuition Grant Program. Even after public schools were re-opened, for a short period the private schools continued to prosper and, indeed, I suspect some still do.[12] Glaringly, Prince Edward County's Board of Supervisors voted not to appropriate funds for public schools, and those schools, understandably, were closed.[13]

Refreshingly, and to its credit, the Virginia Supreme Court of Appeals, as well as a three-judge federal court in 1959, announced decisions that undermined the legal foundation of the obvious state policy of massive resistance.[14]

Governor Almond vehemently responded in a radio/television address to the public in which he vowed, "[W]e have just begun to fight."[15] He went on to speak out against the "false prophets of a 'little or token integration,'" and "those who defend or close their eyes to the livid stench of sadism, sex, immorality and juvenile pregnancy infesting the mixed schools of the District of Columbia and elsewhere."[16] He further pledged, "I will not yield to that which I know to be wrong and will destroy every rational semblance of public education for thousands of the children in Virginia."[17] The same Governor, however, later went on to recom-

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11. *See* ELY, *supra* note 2, at 74–75.

12. *See id.* As Ely notes, "Newly established private schools and emergency classes in homes and churches were generally successful in meeting the situation in Warren County and Charlottesville." *Id.*

13. *See* Griffin v. County Sch. Bd., 377 U.S. 218, 222–23 (1964).

14. Allen v. County Sch. Bd., 266 F.2d 507, 511 (4th Cir. 1959); Harrison v. Day, 200 Va. 439, 453, 106 S.E.2d 636, 647–48 (1959).

15. J. Lindsay Almond, Jr., Public Address (Jan. 20, 1959) (manuscript on file at the Virginia Historical Society) [hereinafter Speech of Jan. 20]. *See also* ALEXANDER LEIDHOLT, STANDING BEFORE THE SHOUTING MOB 114–15 (1997).

16. J. Lindsay Almond, Jr., Speech of Jan. 20.

17. *Id.* In an address to members of the South Carolina bar, Almond declared, "Any enactment and any judicial pronouncement which is not under the authority of and pursuant to the Constitution does not and cannot bear the halo of 'the supreme law of the land.'" J. Lindsay Almond, Jr., Address to the South Carolina Bar Association (May 2, 1958) (manuscript on file at the Virginia Historical Society). Continuing his theme of upholding states' rights in the face of federal judicial intrusion, Governor Almond concluded that "those who accept the specious theory of constitutional evolution funnell [sic] into the pillars of our constitutional system the termites of destruction, aided and abetted by a horde of sycophants, yearning hungrily for the tasty morsels they hope to pluck from the resulting debris." *Id.*

mend a policy of "passive resistance," or, as he sometimes said, "containment."[18]

It is obvious that by that time, for fear of the law of the land being followed, Governor Almond's rhetoric seemed to have permeated the thinking of most the Commonwealth's political leaders. Indeed, the General Assembly of Virginia passed the Tuition Grant Law[19] and repealed the Compulsory Attendance Law[20] as the Governor had recommended. It was the view of a commission appointed by Governor Almond[21] that a policy of "freedom of choice" and "local option" in dealing with school desegregation was the proper course.[22] The commission adopted the recommendations of the Governor, who said, "If we fail to prevent integration in the schools of Virginia, it is not because we have not tried. It is not because we have not evoked every resource known to the institution of the system in which we live."[23]

By early 1959, state and federal courts demolished the policies of overt massive resistance in Virginia.[24] Virginia then turned to

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18. *See* ELY, *supra* note 2, at 124. Despite his many "'emotional appeal[s]' and haranguing 'in demagogic fashion,'" Almond ultimately relinquished his hard-line position on public school segregation. *Id.* As Ely notes, "Almond urged the legislature to repeal both the massive resistance laws declared unconstitutional and the compulsory attendance law, and he strongly backed a revised and broadened tuition grant program." *Id.* at 124. In an address to the General Assembly, who had been called into special session, Almond "announced his surrender." *Id.* at 123.

> It is not enough for gentlemen to cry unto you and me, "Don't give up the ship," "Stop them," "It must not happen," or "It can be prevented." If any of them knows the way through the dark maze of judicial aberration and constitutional exploitation, I call upon them to shed the light for which Virginia stands in dire need in this her dark and agonizing hour. No fair minded person would be so unreasonable as to seek to hold me responsible for failure to exercise powers which the state is powerless to bestow.

J. Lindsay Almond, Jr., Speech before the Virginia General Assembly (Jan. 28, 1959) (manuscript on file at the Virginia Historical Society), *quoted in* ELY, *supra* note 2, at 123.

19. *See* Griffin v. County Sch. Bd., 377 U.S. 218, 222 & n.3 (1964).

20. *See id.* at 222 & n.4.

21. The Governor designated the Perrow Commission to devise a permissible and practicable means of school integration. Ely, *supra* note 2, at 128. The Commission was headed by State Senator Mosby G. Perrow, Jr. and, though ostensibly representative of the Commonwealth, included many die-hard massive resisters, including future Governor Mills Godwin. ELY, *supra* note 2, at 128.

22. *See Griffin*, 377 U.S. at 222.

23. J. Lindsay Almond, Jr., Speech before the Virginia General Assembly (Apr. 6, 1959) (manuscript on file at the Virginia Historical Society).

24. By 1959, both state and national political pressures had severely weakened the control of the "Byrd machine," which had driven the politics of massive resistance. ELY, *supra* note 2, at 140–43. As Ralph McGill, the editor of the *Atlanta Constitution* an-

tokenism. The power to assign all children to schools was given to a single state board. While racism as a reason for assignment to a particular school was carefully omitted, if a black child attempted to attend what was considered a white school, he or she was subjected to aptitude and achievement tests, hearings, etc. Simultaneous therewith, tuition grants were permitted, which, as one would anticipate, encouraged the establishment of private schools, and as such created an escape hatch for white students who objected to sharing classrooms with blacks. Tuition grants in general were limited to non-sectarian schools.[25]

By 1963, Surry County public schools were ordered desegregated; so all the white children withdrew and enrolled in a new private school for whites. Powhatan County schools also desegregated in the fall of that year, and a private school for white students was formed. In that community, however, a group of parents joined in an organization they called "Citizens for Public Education" with the purpose of encouraging as many students as possible to remain in the public schools. Many white students did, though the vast majority went to private schools.

In a challenge to the "freedom of choice" plan employed in New Kent County, the trial court held that freedom of choice was constitutional and approved the operation of freedom of choice.[26] The population was just about equally divided between blacks and whites. No white student had chosen to attend what was the all-black school; a few black students enrolled in a formerly all-white school.[27] In short, approximately eighty-five percent of the black students were still attending what was the old black school at the time of the Supreme Court's ruling.[28]

On May 27, 1968, the Supreme Court, in an opinion authored by Justice Brennan, held:

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nounced, "'Virginia's Byrd machine . . . is broken . . . . the Byrd machine has been knocked out.'" *Id.* at 143.

25. Many of these mechanisms of "passive" resistance were formulated by the Perrow Commission. *See supra* notes 22–24 and accompanying text. For a further discussion of the Perrow Commission and the legislation that arose from it, see ELY, *supra* note 2, at 128–35.

26. Green v. County Sch. Bd., 391 U.S. 430 (1967).

27. *Id.* at 433.

28. Ronald J. Bacigal & Margaret I. Bacigal, *A Case Study of the Federal Judiciary's Role in Court-Ordered Busing: The Professional and Personal Experiences of U.S. District Judge Robert R. Merhige, Jr.*, 3 J.L. & POL. 693, 697 (1986–87).

> The pattern of separate "white" and "Negro" schools in the New Kent County school system established under compulsion of state laws is precisely the pattern of segregation to which *Brown I* and *Brown II* were particularly addressed, and which *Brown I* declared unconstitutionally denied Negro school children equal protection of the laws.[29]

Identification with the New Kent school system, which was composed of two schools, extended not only to the composition of the student bodies of those schools in the county, but every facet of school operation—faculty, staff, as well as extracurricular activities and facilities.[30]

In short, the Court held that "freedom of choice" was not, in and of itself, unconstitutional.[31] The decision pointed out, however, that only if such a plan proved effective would it be acceptable, but if it failed, as it did in that case, other means must be used to achieve the required result.[32] The Court, quoting from Judge Sobeloff, then of the United States Court of Appeals for the Fourth Circuit, said, "School officials have the continuing duty to take whatever action may be necessary to create a 'unitary, nonracial system.'"[33]

Interestingly, the Fourth Circuit, in a case dealing with Charles City County, *Bowman v. County School Board*,[34] had held that "[s]ince the plaintiffs here concede that their annual choice [of school] is unrestricted and unencumbered, we find in its existence no denial of any constitutional right not to be subjected to racial discrimination."[35] The *Bowman* case mandated a plan to create meaningful and immediate progress toward establishing state imposed segregation.[36] The Supreme Court, in *Green*, left little doubt that the burden was on the school board "to come forward with a plan that promise[d] realistically to work, and promise[d] realistically to work *now*."[37] The utilization of the word "*now*" was the catalyst of desegregation.

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29. *Green*, 391 U.S. at 435.
30. *Id.*
31. *Id.* at 439–40.
32. *Id.*
33. *Id.* at 440 (quoting Bowman v. School Board, 382 F.2d 326, 333 (4th Cir. 1967)).
34. 382 F.2d 326 (4th Cir. 1967).
35. *Id.* at 328.
36. *Id.* at 329.
37. *Green*, 391 U.S. at 439.

Prior statements by appellate courts unintentionally gave hope to those who approved of segregated schools by the fact that many contained language such as:

> [E]ducation of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights guaranteed by the law of the land.[38]

Even the Fourth Circuit in the *Green* case, by its opinion, inadvertently failed to direct immediate desegregation.[39] To its credit, the Supreme Court, in its *Green* opinion, left no such encouragement of continued segregation by its mandate that desegregation of our public schools required immediate action by the respective school boards.[40]

I was sworn in as a United States District Judge on August 20, 1967. Over ten years had passed since the Supreme Court's refutation of the "separate but equal" doctrine. Yet, public schools in Richmond, and, indeed, in much of Virginia, remained rigidly segregated. Virginia had led the South in massive resistance to the Supreme Court's edict that the school system should be integrated with "all deliberate speed."[41] Virginia's response to the decisions in *Brown* and *Green* was absolute defiance, with the implicit suggestion that if one did not agree with the decision of the Supreme Court, it was to be ignored.[42]

By 1959, Virginia's strategy of massive resistance faltered as it became clear that the federal courts would not turn a blind eye toward what amounted to overt state-enforced segregation.[43] Segregationists, in Virginia, as throughout the South, became more creative, relying on comments like Judge Parker's pronouncement

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38. Briggs v. Elliott, 98 F. Supp. 529, 532 (E.D.S.C. 1951) (quoting Cumming v. Richmond County Bd. of Educ., 175 U.S. 528, 545 (1899)).

39. *See* County Sch. Bd. v. Green, 382 F.2d 338, 339 (4th Cir. 1967)

40. *Green*, 391 U.S. at 439.

41. Brown v. Bd. of Educ., 349 U.S. 294, 301 (1955).

42. Mills Godwin, a State Senator, who would later serve as Governor, was a member of the Perrow Commission, but nonetheless an outspoken resister of desegregation. "Integration," he once said, "would be a cancer eating at the very lifeblood of our public education system."

43. *See supra* notes 19–26 and accompanying text.

that the Constitution "does not require integration, it merely forbids discrimination."[44]

Under freedom of choice plans, each student was assigned to a particular school, usually the neighborhood school the child had been attending previously.[45] Because housing was strictly segregated both by the law and by custom, the racial composition of the schools reflected the lack of racial diversity in the neighborhoods. All students were then allowed a "free transfer" to the school of the student's choice.[46] In most instances, this meant that a small percentage of the black students would choose to attend the previously all-white schools, while no whites would attend the black schools.[47] "Black schools" and "white schools" thus remained generally in place.

Many viewed freedom of choice plans as a moderate and reasonable response to the desegregation question. Indeed, prior to my appointment to the federal bench and the issuance of the Supreme Court's decision in *Green v. County School Board*, the United States District Court in Richmond supported such plans.[48]

Ultimately, the constitutionality of those plans was challenged in the Supreme Court. In his argument to the high court, State Senator Fredrick T. Gray articulated Virginia's defense of the freedom of choice plan:

> The state may remain neutral with respect to private racial discrimination. Desegregation (i.e., the elimination of state enforced segregation solely because of race) is a legal question; integration (i.e., the compulsory assignment of pupils to achieve intermingling) is an educational question—best left for decision by educators, for educational purposes, on the basis of educational criteria. A freedom of choice plan alone honors this distinction.[49]

The Supreme Court rejected Virginia's freedom of choice plan based on evidence that the plan was ineffective as a tool of desegregation.[50] The Court observed that after nearly three years of operation, the freedom of choice plan utilized by New Kent

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44. Briggs v. Elliott, 132 F.Supp. 776, 777 (E.D.S.C. 1955).

45. *Green*, 391 U.S. at 433–34.

46. *Id.*

47. For additional discussion of the "freedom of choice" plan and Virginia's move toward "tokenism," see ELY, *supra* note 2, at 129–30.

48. *Green*, 391 U.S. at 434.

49. Brief for Respondents at 32, Green v. County Sch. Bd., 391 U.S. 430 (1968) (No. 67-695). *See* Bacigal & Bacigal, *supra* note 28, at 697.

50. *Green*, 391 U.S. at 441–42.

County had failed to achieve a unitary school system.[51] Eighty-five percent of the black children remained in the traditionally all-black school, while not a single white child attended the same.[52] The Supreme Court further held that New Kent County's freedom of choice plan impermissibly placed the burden of dismantling the dual school system on children and parents, rather than on the school board as *Brown* had dictated.[53]

The message of *Green v. County School Board* was inescapable: the Supreme Court was now mandating results. As one commentary has noted, with *Green*, the Supreme Court recognized that, "Centuries of discrimination could not be overcome by benign indifference."[54] And thus the courts' position shifted from "Thou shalt not segregate" to the position that "Thou shalt integrate [*now*]."

The Supreme Court's decision in *Green* came down on May 28, 1968, some nine months after I had been sworn in as a United States District Court Judge. Upon hearing of the Supreme Court's decision, I naively thought that the era of resistance to desegregation in Virginia school systems, whether through overt or indirect means, was coming to a close. Adherence to the law was something I took for granted. The "all deliberate speed" mandate of *Brown* had inadvertently invited delay. Reasonable individuals differed on whether *Brown* required integration or merely prohibited overt state-sanctioned discrimination. Now that the Supreme Court affirmatively and unequivocally required school districts to take direct action to achieve integration, I naively expected prompt, if begrudging, compliance.

The day after Virginia's freedom of choice plan was struck down in *Green*, Samuel W. Tucker, who had argued the case for the plaintiffs in the Supreme Court, came to my chambers seeking a hearing date in reference to that case. His motion was followed in rapid succession with motions to reopen each and every school case that had come through the Richmond division. The exact number escapes me, but I am reasonably certain that between the school cases within the jurisdiction of the Eastern District of Virginia and those which my colleague Judge Dalton of

51. *Id.* at 441.
52. *Id.*
53. *Id.* at 441–42.
54. Bacigal & Bacigal, *supra* note 28, at 697.

the Western District asked me to handle, I found myself with in excess of forty school cases.

The Supreme Court announced in *Green* that the "obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation."[55] In fairness, however, it must be noted that even federal judges acting out of sincere motivations differed on what the law required. Mills Godwin quoted United States District Judge Walter Hoffman, a judge well known for his firm upholding of the mandates of the Supreme Court in reference to *Brown* and its progeny, as saying that it was "difficult to understand just what the law required." Fortunately, the *Green* case removed any such difficulty and I promptly inquired of the school boards as to whether desegregation was in effect.

In my view, the Supreme Court could not have been more emphatic. In its unanimous opinion, the Court held that: "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*."[56] In recollection, the *Green v. County School Board* case was unimaginably very simple. New Kent County's utilization of the freedom of choice plan had effectively maintained the patterns of segregation that had previously been mandated by the law. New Kent County had only two schools; there was a white school and the other, an all-black school. The only way to desegregate those schools was to make one a grammar school and the other a high school. To me, as a judge, the solution seemed obvious.

New Kent's initial defense was that to convert the schools would require extensive renovations. Though the plaintiffs contended that the schools could be ready for desegregation within a matter of weeks, the defendants insisted that the anticipated renovation would take considerably longer. The tactics used by the New Kent School Board were not unlike those used by the leadership of other localities.

Whenever possible, I tried to proceed slowly to give the community time to adjust. Unfortunately, my attempts to accommodate the communities only led to more delay—school districts argued that they needed more time to convert an all-white school

55. *Green*, 391 U.S. at 439.
56. *Id.*

into a racially mixed grammar school. The school board cited such renovation as lowering the urinals so that the younger students could be accommodated. Because the school board made the claim, a fact-finding mission was required to determine the urinals were not in fact excessively high.

Insofar as the physical context of desegregation, I was constantly reminded that President Nixon was opposed to what became the favored political subject—busing—despite the fact that busing did not begin with school desegregation.[57] In the counties where there were great distances between schools, busing children to school was simply a fact of life. Busing thus had been employed in Virginia for many years prior to the Supreme Court's action, although busing was generally utilized only for the benefit of white students. Mr. Tucker asserted that when he attended grammar school, only white children were afforded the use of buses. Black children were, if they wished to attend, forced to walk to school regardless of the distance.[58]

Busing, though necessary, became a reason for disagreeing with integration plans. Indeed, in some instances, the practical argument against busing could be easily made. Time spent riding to and from school was, and is, largely unproductive—nevertheless, because of the physical locations of schools, it was necessary. In cities such as Richmond, generally the schools for whites were in much better condition than the schools in black neighborhoods. The bottom line was that the children were, in fact, paying for the conduct of prior generations who had maintained, by custom and law, segregated neighborhoods.

More than forty school cases were heard in turn and the court repeatedly ordered the various school boards to abandon freedom of choice plans in favor of plans that would effectively desegregate their schools. The response of the community was both rapid and large. I was told at the time that the local newspapers were continually critical of the court's action and expressed their criticism almost daily in both their editorials and the printing of letters from the public.

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57. *See* Lee A. Daniels, *In Defense of Busing*, N.Y. TIMES, Apr. 17, 1983, § 6 at 34.

58. Reflecting on his experiences, Mr. Tucker once said, "I got involved in the civil rights movement on June 18, 1913, in Alexandria—I was born black." Bacigal & Bacigal, *supra* note 28, at 700.

The opposition was continuous. Letters were literally brought into my office, and the threats were of a serious enough nature to cause the marshal service to assign between eight and eleven marshals to guard my home on a twenty-four-hour-a-day basis, to accompany my youngest son to school, and my wife whenever she left the property. For about two years I never left my home when I was not accompanied by one or more United States Marshals. The United States Attorney's Office reported to me that on at least two occasions one or more persons endeavored to solicit money to be used to hire someone to assassinate me.

It was, indeed, an unpleasant time for me and my family. In the interim, my dog was shot, my guest house was burned to the ground, and calls for my impeachment emanated not only from what might be described as "ordinary citizens," but from state legislators, at least one United States Senator, and one Congressman. Indeed, my sole claim to fame is that at one point my name was substituted for that of Chief Justice Warren on a billboard which firmly read "Impeachable."

I foolishly believed that the public, though perhaps reluctant, would accept the law as the law. Those who threatened not only me, but the welfare of my family, and those who picketed the courthouse by the hundreds, in my opinion, were totally irresponsible and totally ignorant of the fact that ours is a country of law. One could understand resentment about a judge if, for example, he were entering decrees which affected so many people and those decrees were continually reversed on appeal, but such was not the situation. Of the more than forty desegregation cases I decided, only one or two did not stand on appeal.

Among those cases was the Emporia case which was reversed by my Court of Appeals, which in turn was reversed by the United States Supreme Court, asserting my decree.[59] The other case was the Richmond Consolidation case, *Bradley v. School Board*,[60] which was also reversed by my Court of Appeals. As a former member of the Richmond School Board, Justice Powell declined to participate in it.

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59. *See* Wright v. County Sch. Bd, 309 F. Supp. 671 (E.D. Va. 1970), *rev'd.* 442 F.2d 570 (4th Cir. 1971), *rev'd.* 407 U.S. 451 (1972).

60. 338 F. Supp. 67 (E.D. Va. 1971), *rev'd.* 462 F.2d 1058 (4th Cir. 1973), *aff'd by an equally divided Court*, 412 U.S. 92 (1973).

It would be unfair to leave the impression that every citizen acted irresponsibly. Many were courageous. Governor Holton, in particular, who had children of school age, publicly escorted them to public schools in accord with the desegregation decree.[61] The Governor's actions were even more remarkable given that because the Governor's Mansion was located on state, not city, property, the Governor's children were technically exempt from the Court's busing order. His actions brought criticism from a segment of the public, but his courage was a great source of comfort to me. Indeed, his actions helped to alleviate my concern that I had unfairly subjected my own family to danger.

Among others who demonstrated courage in their vocal support of quiet adherence to the law, was my friend, J. Sargeant Reynolds, a State Senator and then Lieutenant Governor. There were, I am sure, many others, though most local political leaders, by their silence, left little doubt as to their feelings of discontent.

Of course, I will never forget the tenacious courage of Samuel Tucker, who was a law partner of Oliver Hill. Mr. Tucker was counsel for the plaintiffs in many of the cases. Neither will I forget the many defense lawyers, such as my late colleague, D. Dortch Warriner, who, though disagreeing with the Court's decree, refused to participate in encouraging the personal attacks on me and my family.

It has been many years since the rendering of the famous *Brown* and *Green* decisions. It would appear that we have made progress—though hopefully not as much as we will in the future.

African Americans are at long last receiving, to a great extent, the treatment and vision of the Fourteenth Amendment. Our citizenry is at long last conscious of the educational depravation to which some of our citizens have been subjected and time, morality, and the law give great promise of ultimate equality in education as well as in other aspects of our lives. For this we are grateful.

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61. *See* Michael Paul Williams, *Toasting Titans of Racial Justice*, RICH. TIMES DISPATCH, Feb. 3, 2001, at B1.

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