school boards to assign their pupils in such manner as will best serve the welfare of their communities and protect and foster the public schools under their jurisdiction. The Commission further proposes legislation to provide that 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."

In order to implement the tuition grant strategy, the Gray Commission called for the amendment of section 141 of the Virginia constitution—which had formerly prohibited public funds from being appropriated for tuition payments of students who attended private schools—so that "enforced integration (could be) avoided."

I also would seek permission to include the text of the Gray proposals into the record of these proceedings, it is not long.

The CHAIRMAN. They will be admitted.

(The material referred to follows:)

REPORT OF THE VIRGINIA COMMISSION ON PUBLIC EDUCATION (GRAY COMMISSION), NOVEMBER 11, 1955

(From Race Relations Law Reporter, Volume 1, Number 1, 1956)

EDUCATION—PUBLIC SCHOOLS—VIRGINIA

On August 30, 1954, the Governor of Virginia appointed a Commission on Public Education (known as the "Gray Commission") to examine the effect of the decision of the United States Supreme Court in the *School Segregation Cases* and to make recommendations. A portion of the report of that Committee, including recommended constitutional [a] and legislative changes, appears below.

REPORT OF COMMISSION ON PUBLIC EDUCATION

RICHMOND, VA., *November 11, 1955.*

TO: THE HONORABLE THOS. B. STANLEY, *Governor of Virginia*

Your Commission was appointed on August 30, 1954, and instructed to examine the effect of the decision of the Supreme Court of the United States in the school segregation cases, decided May 17, 1954, and to make such recommendations as may be deemed proper. The real impact of the decision, however, could not be fully considered until the final decree of the Supreme Court was handed down and its mandate was before the Federal District Court for interpretation. This did not take place until July 18, 1955.

The Commission and its Executive Committee have held many meetings, including a lengthy public hearing, wherein many representatives of both races expressed their views, and the Commission has made two interim reports, one on January 19, 1955, and the other on June 10, 1955. It now submits its further recommendations for consideration by Your Excellency.

* * * * * * *

SUMMARY OF LEGISLATION PROPOSED

The Commission has been confronted with the problem of continuing a public school system and at the same time making provision for localities wherein public schools are abandoned, and providing educational opportunities for children whose parents will not send them to integrated schools.

To meet the problem thus created by the Supreme Court, the Commission proposes a plan of assignment which will permit local school boards to assign their

[a] On January 9, 1956, the electors of Virginia voted on a proposal to call a convention to amend the Virginia Constitution (see Appendix III, below). Unofficial returns indicated that the proposal was adopted.

pupils in such manner as will best serve the welfare af their communities and protect and foster the public schools under their jurisdiction. The Commission further proposes legislation to provide that 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.

There has heretofore been pending before The Supreme Court of Appeals of Virginia the case of *Almond* v. *Day*, in which the court had before it for consideration the question of whether the Legislature could validly appropriate funds for the education of war orphans at public and private schools. On November 7, 1955, the Court rendered its decision and held, among other things, that § 141 of the Constitution of Virginia prohibited the appropriation of public funds for payments of tuition, institutional fees and other expenses of students who may desire to attend private schools.

If our children are to be educated and it enforced integration is to be avoided, it is now clear that § 141 must be amended. Moreover, unless this is done, the State's entire program, insofar as attendance to private schools is concerned, involving the industrial rehabilitation program for the physically and mentally handicapped, grants for the education of deserving war orphans, grants in aid of Negro graduate students, and scholarships for teaching and nursing, to remedy shortages in these fields is in jeopardy.

Accordingly, it is recommended that a special session of the General Assembly be called forthwith for the purpose of initiating a limited constitutional convention so that § 141 may be amended in ample time to make tuition grants and other educational payments available in the current year and the school year beginning in the fall of 1956. A suggested bill for consideration of the General Assembly is attached hereto as Appendix III.

Contingent upon the favorable action of the people relative to the amendment of the Constitution herein proposed, your Commission recommends the enactment of legislation in substance as follows:

1. *That school boards be authorized to assign pupils to particular schools and to provide for appeals in certain instances.*

Such legislation would be designed to give localities broad discretion in the assignment of pupils in the public schools.

Assignments would be based upon the welfare of the particular child as well as the welfare and best interests of all other pupils attending a particular school. The school board should be authorized to take into consideration such factors as availability of facilities, health, aptitude of the child and the availability of transportation.

Children who have heretofore attended a particularl public school would not be reassigned to a different one except for good cause shown. A child who has not previously attended a public school or whose residence has changed, would be assigned as aforesaid.

Any parent, guardian or other person having custody of a child, who objects to the assignment of his child to a particular school under the provisions of the act should have the right to make application within fifteen days after the giving of the notice of the particular assignment to the local school board for a review of its action. The application should contain the specific reasons why the child should not attend the school assigned and the specific reasons why the child should be assigned to a different school named in the application. After the application is received by the local school board a hearing would be held within forty-five days and, after hearing evidence, the school board would determine to what school the child should be assigned.

An appeal if taken should be permitted from the final order of the school board within fifteen days. The appeal would be to the circuit or corporation court. The local school board would be made a defendant in this action and the case heard and determined *de novo* by the judge of the court, either in term or in vacation. If either party be aggrieved by the order of the court an appeal should be permitted to the Supreme Court of Appeals of Virginia.

2. *That no child be required to attend an integrated school.*

3. *That the sections of the Code relating to the powers and duties of school boards relative to transportation of pupils be amended as as to provide that school boards may furnish transportation for pupils.*

In the opinion of the Commission, such is merely a restatement of existing law. However, it is felt that it should be made perfectly clear that no county school board be required to furnish transportation to school children.

4. *That changes be made in the law relating to the assignment of teachers.*

Local school boards should be vested with the authority to employ teachers and assign them to a particular school. The division superintendent should be permitted to assign a particular teacher to a particular position in the school, but not to assign the teadher to a school different from that to which such teacher was assigned by the local school board without the consent of such board.

5. *That localities be authorized to raise sums of money by a tax on property, subject to local taxation, to be expended by local school authorities for educational purposes including cost of transportation and to receive and expend State aid for the same purposes.*

Those localities wherein no public schools are operated should be authorized to provide for an educational levy or a cash appropriation in lieu of such levy. The maximum amount of the levy or cash appropriation, as the case may be, should be limited in the same manner as school levies or school appropriations are limited.

The procedure to be followed by school officials and local tax levying bodies for obtaining these educational funds would be the same as prescribed by law for the raising of funds for public school purposes. The educational funds so raised would be expended by the local school board for the payment of tuition grants for elementary or secondary school education and could, in the discretion of the board, be expended for transportation costs. Local school boards should be vested with the authority to pay out such grants and costs under their own rules and regulations.

Localities should be granted and allocated their share of State funds upon certifying that such funds would be expended for tuition grants. Any person who expends a tuition grant for any purpose other than the education of his child should be amenable to prosecution therefor.

6. *That school budgets be required to include amounts sufficient for the payment of tuition grants and transportation costs under certain circumstances; that local governing bodies be authorized to raise money for such purposes; that provision be made for the expenditure of such funds; and that the State Board of Education be empowered to waive certain conditions in the distribution of State funds.*

This would be companion legislation to that dealing with the assignment of pupils and compulsory education, respectively. It would be designed to further prevent enforced integration by providing for the payment of tuition grants for the education of those children whose parents object to their attendance at mixed schools. Without such a measure, enforced integration could not be effectively avoided since many parents would then be required to choose integrated schools as the only alternative to the illiteracy of their children.

The division superintendent of the schools of every county, city or town wherein public schools are operated should be required to include in his estimate of the school budget an amount of money to be expended as tuition grants for elementary and secondary school education. The locality would be authorized to include in its school levy or cash appropriation an amount necessary for such tuition grants.

The educational funds so raised would be expended in payment of tuition grants for elementary or secondary school education to the parents, guardians or other persons having custody of children who have been assigned to public schools wherein both white and colored children are enrolled, provided such parents, guardians or other persons having custody of such children certify that they object to such assignment.

Each grant should be in the amount necessary for the education of the child, provided, however, that in no event would such grant exceed the total cost of operation per pupil in average daily attendance in the public schools for the locality making such grant as determined for the preceding school year by the Superintendent of Public Instruction.

Provision should be made for the payment of transportation costs in the discretion of the board to those who qualify for tuition grants.

No locality that expends funds for tuition grants should be penalized in the distribution of State funds. Any person who expends tuition grants for any purpose other than for the education of his child should be amenable to prosecution.

7. *That provision be made for the reimbursement by the State of one-half of any additional costs which may be incurred by certain localities in payment of tuition grants required by law.*

The Commission realizes that the payment of tuition grants in localities wherein public schools are operated may necessitate some expenditures beyond the adopted

school budgets. Since tuition grants are vital to the prevention of enforced integration, it should be provided that the State bear one-half of any excess costs to the locality.

8. *That local school boards be authorized to expend funds designed for public school purposes for such tuition grants as may be permitted by law without first obtaining authority therefor from the tax levying body.*

Local school boards should be authorized to transfer school funds, excluding those for capital outlay and debt service, within the total amount of their budget and to expend such funds for tution grants, in order to give the local boards more flexibility to meet the requirements of the tuition grant program.

9. *That the employment of counsel by local school boards be authorized to defend the actions of their members and that the payment of costs, expenses and liabilities levied against them be made by the local governing bodies out of the county or city treasury as the case may be.*

Such a measure is necessary if we are to continue to have representative citizens as members of our local school boards.

10. *That the Virginia Supplemental Retirement Act be broadened to provide for the retirement of certain private school teachers.*

The Virginia Supplemental Retirement Act should be broadened to provide for the retirement of school teachers if such teachers be employed by a corporation organized for the purpose of operating a private school after the effective date of the enactment of legislation recommended by this report.

The purpose of this is to protect the retirement status of those public school teachers who may hereafter desire to teach in private schools that are established because of the decision in the school segregation cases. Corporate entity is deemed necessary for practical administration by the Retirement Board.

11. *That the office of the Attorney General should be authorized to render certain services to local school boards.*

The Attorney General should be authorized when requested to do so by a local school board, to give such advice and render such legal assistance as he deems necessary upon questions relating to the commingling of the races in the public schools.

The localities will have many problems confronting them in view of the school segregation cases and will also have many new responsibilities, including the promulgation of a vast number of detailed rules and regulations. Under such circumstances it is felt that the office of the Attorney General should be made available to them. The Commission realizes, of course, that in order for such a measure to operate effectively the office of the Attorney General must be expanded and the necessary funds appropriated by the General Assembly.

12. *That those sections of the Code relating to the minimum school term, appeals from actions of school boards, State funds which are paid for public schools in counties, school levies and use thereof, cash appropriations in lieu of school levies, and unexpended school funds, be amended; and that certain obsolete sections of the Code be repealed.*

Local school boards should be authorized but not required to maintain public schools for a period of at least nine months. A locality may be confronted with an emergency situation.

The present procedure governing appeals from actions of school boards should be clarified so that it will not conflict with appeals in assignment cases.

The State Board of Education appears to have the authority to approve the operation of schools in a locality for a period of less than nine months with no loss in State funds. This should be made clear.

The requirement for minimum school levies or cash appropriations in lieu thereof should be eliminated and levies or cash appropriation for educational purposes authorized.

The procedure for the reversion of unexpended school funds should be broadened so as to make it apply to appropriations for educational purposes.

Those sections of the Code relating to distribution of school funds which are obsolete, being covered by the Appropriation Act, should be repealed.

The section of the Code requiring segregated schools has been rendered void by the Supreme Court of the United States and should be repealed.

The section of the Code requiring cities to maintain a system of public schools should be repealed since it duplicates another provision of the Code.

Appendix III

A BILL *To provide for submitting to the qualified electors the question of whether there shall be a convention to revise and amend certain provisions of the Constitution of Virginia*

Whereas, by Item 210 of the Appropriation Act of 1954 (Acts of Assembly, 1954, Chapt. 708, p. 970), the General Assembly sought to enact measures to aid certain war orphans in obtaining an education at either public or private institutions of learning, which said Item has been adjudicated by the Supreme Court of Appeals of Virginia, insofar as it purports to authorize payments for tuition, institutional fees and other expenses of students who attend private schools, to be violative of certain provisions of the Constitution respecting education and public instruction; and,

Whereas, the State's entire program, insofar as attendance at private schools is concerned, involving the industrial rehabilitation program, grants for the education of war orphans, grants in aid of Negro graduate students, and scholarships for teaching and nursing, is in jeopardy; and

Whereas, in order to permit the handicapped, war orphans, Negro graduate students and prospective teachers and nurses to receive aid in furtherance of their education at private schools and in order to insure educational opportunities for those children who may not otherwise receive a public school education due to the decision of the Supreme Court of the United States in the school segregation cases, it is deemed necessary that said provisions of the Constitution be revised and amended; and,

Whereas, it is impossible to procure such amendments and revisions within the time required to permit educational aid forthwith for the current school year and that beginning in the fall of 1956 except by convening a constitutional convention; and,

Whereas, because it is deemed unwise at this time to make any sweeping or drastic changes in the fundamental laws of the State, and also, in order to assure the adoption of the contemplated amendments and revisions within the time necessary to permit educational aid in the school year of 1956–57, it is deemed necessary that the people eliminate all questions from consideration by said convention save and except those essential to the adoption of those revisions and amendments specified in this Act; and,

Whereas, in order to avoid heated and untimely controversies throughout the State as to what other matters, if any, may or should be acted upon by said convention, it is believed to be in the public interest to submit to the electors the sole question whether a convention shall be called which will be empowered by the people to consider and act upon said limited revisions and amendments only, and not upon any others:

Now, therefore, be it enacted by the General Assembly of Virginia:

1. § 1. That at an election to be held on such day as may be fixed by proclamation of the Governor (but not later than sixty days after the passage of this Act), there shall be submitted to the electors qualified to vote for members of the General Assembly the question "Shall there be a convention to revise the Constitution and amend the same?" Should a majority of the electors voting at said election vote for a convention, the legal effect of same will be that the people will thereby delegate to it only the following powers of revision and amendment of the Constitution and no others:

A. The convention may consider and adopt amendments necessary to accomplish the following purposes, and no others:

To permit the General Assembly and the governing bodies of the several counties, cities and towns to appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate and graduate education of Virginia students in nonsectarian public and private schools and institutions of learning in addition to those owned or exclusively controlled by the State or any such county, city or town.

B. The convention shall be empowered to proclaim and ordain said revisions and amendments adopted by it within the scope of its powers as above set forth without submitting same to the electors for approval, but the convention will not have the power to either consider, adopt, or propose any other amendments or revisions.

§ 2. The judges of election and other officers charged with the duty of conducting elections at each of the several voting places in the State are hereby required to

hold an election upon the said question of calling the convention, on the day fixed therefor by proclamation of the Governor, at all election precincts in the State, but the several electoral boards may, in their discretion, dispense with the services of clerks of election in such precincts as they may deem appropriate. Copies of the Governor's proclamation shall be promptly sent by the State Board of Elections to the secretary of each electoral board and due publicity thereof given through the press of the State and otherwise if the Governor so directs.

§ 3. The ballots to be used in said election the State Board of Elections shall cause to be printed, and distributed and furnished to the respective electoral boards of the counties and cities of the State. The number furnished each such board shall be ten per centum greater than the total number of votes cast by said board's county or city in the last presidential election. The respective electoral boards shall cause the customary identification seal to be stamped on the ballots delivered to them. In order to insure that the electors will clearly understand the limited powers which may be exercised by the convention, if called, said ballots shall be printed in type not less in size than small pica and contain the following words and figures:

"Constitutional Convention Ballot:

"INFORMATORY STATEMENT

"The Act of the General Assembly submitting to the people the question below provides that the elector is voting for or against a convention to which will be delegated by the people only the limited powers of revising and amending the Constitution to the extent that is necessary to accomplish the following purposes, and no other powers:

To permit the General Assembly and the governing bodies of the several counties, cities and towns to appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate and graduate education of Virginia students in nonsectarian public and private schools and institutions of learning in addition to those owned or exclusively controlled by the State or any such county, city or town.

"The Act also provides that the legal effect of a majority vote for a convention will be that the people will delegate to it only the foregoing powers, except that the convention will be empowered to ordain and proclaim said revisions and amendments adopted by it within the scope of said powers without submitting same to the electors for approval, but the convention will not have the power to either consider, adopt or propose any other amendments or revisions.

"In the light of the foregoing information the question to be voted on is as follows:

"Shall there be a convention to revise the Constitution and amend the same?

"☐ For the convention.

"☐ Against the convention."

§ 4. A ballot deposited with a cross mark, a line or check mark placed in the square preceding the words "For the convention" shall be a vote for the convention, and a ballot deposited with a cross mark, line or check mark preceding the words "Against the convention" shall be a vote against convention.

§ 5. The ballots shall be distributed and voted, and the results thereof ascertained and certified, in the manner prescribed by section 24–141 of the Code of Virginia. It shall be the duty of the clerks and commissioners of election of each county and city, respectively, to make out, certify and forward an abstract of the votes cast for and against the convention in the manner now prescribed by law in relation to votes cast in general State elections.

§ 6. It shall be the duty of the State Board of Elections to open and canvass the said abstracts of returns, and to examine and make statement of the whole number of votes given at said election for and against the convention, respectively, in the manner now prescribed by law in relation to votes cast in general elections; and it shall be the duty of the State Board of Elections to record said certified statement in its office, and without delay to make out and transmit to the Governor of the Commonwealth an official copy of said statement, certified by it under its seal of office.

§ 7. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the convention to be published in such newspapers in the State as may be deemed requisite for general information. The State Board of Elections shall cause to be sent to the clerks of each

county and corporation, at least fifteen days before the election, as many copies of this Act as there are places of voting therein; and it shall be the duty of such clerks to forthwith deliver the same to the sheriffs of their respective counties and sergeants of their respective cities for distribution. Each such sheriff or sergeant shall forthwith post a copy of such Act at some public place in each election district at or near the usual voting place in the said district.

§ 8. The expenses incurred in conducting this election, except as herein otherwise provided, shall be defrayed as in the case of the election of members of the General Assembly.

§ 9. The State Board of Elections shall have authority to employ such help and incur such expenses as may be necessary to enable it to discharge the duties imposed on it under this Act, the expenses thereof to be paid from funds appropriated by law.

2. An emergency existing, this Act shall be in force from the time of its passage.

Mr. CONYERS. Thank you, Mr. Chairman, so it may be viewed with the other recommendations which include the polling in the Gray Commissior itself. One is that no child be required to attend an integrated school.

2. That localities should be granted State funds upon certifying that such funds would be expended for tuition grants (to send, in practice, white children to segregated, all-white private institutions).

3. That the State board of education be empowered to liberalize certain conditions in the distribution of State funds (so that, in practice, tuition grants, transportation costs, institutional fees, and other expenses involved in supporting the multitudinous new white private schools could be met).

So, I think it should be clear, Mr. Chairman, without reading the entire statement which has been permitted to be put in the record, that there is a great deal to be inquired into contrary to the thinking of many of my friends, some of whom have testified before this committee, who have candidly admitted that they have not sought to inquire into the grounds either favorable or otherwise to this second nomination that is simultaneously before this committee for consideration, because I would suggest to you that the directorships of corporations of the nominee which were directly implicated in racial discrimination lawsuits involving title 7 of the Civil Rights Act of 1964 do require your examination, and might I just mention the fact that the nominee here has personally and publicly admitted that he is a longstanding member of the Country Club of Virginia as well as the Commonwealth Club of Richmond.

He has confirmed that he never sought to alter their policies against the admission of black Americans to those clubs, and so many of his supporters, I have heard, contend that his claim that he used the country club membership only infrequently is itself a defense for his voluntarily joining and frequenting openly segregated places of leisure. His volunteering the information that he belongs to these clubs is similarly held in some circles as a defense.

Neither of these facts can hide the fact that a potential Supreme Court Associate Justice saw nothing wrong in such policies as the Commonwealth Club's practice of allowing "colored servants with them to the club only if they are dressed in appropriate attire." The added so-called defense offered by his supporters—that he belongs to the University Club and the Century Association of New York (both of which are integrated)—is a direct affront to the intelligence of the American people. The acquiescence in the face of institutionalized

segregation which, in our judgment, characterizes the career of the nominee, as an educator in Virginia, finds succinct symbolism in his shrug-of-the-shoulder attitude on the issue of membership in segregated country clubs. How can a man who has never raised his voice to such distasteful segregationist practices claim to be philosophically sensitive or at all attuned to the vital issues of particular import to blacks on which he will have to exercise considered judgment as a member of the Supreme Court?

The importance of this issue becomes readily apparent when one realizes that a member of this illustrious body, Senator Edward Brooke, and if, in my judgment unfortunately, if Mr. Powell is confirmed, a fellow member of the Supreme Court, Justice Thurgood Marshall, would be precluded from joining him as a guest at a number of the clubs in which he holds membership.

I only mention for purposes of inviting discussion the fact that is dealt with in some detail, the fact that the law firm of the nominee which reputedly has in its employ over a hundred attorneys, has yet to face the question of equal employment for black attorneys as well as whites in that office.

We would conclude, if it pleases the chairman and members of this committee, that the life style, his view of government as evidenced by Mr. Powell's own activities on the boards of education, his close association with a variety of corporate giants, his public conduct, his membership in the largest all-white law firm in Richmond, his support of segregated social clubs, and his defense of the status quo, are inconsistent with the kind of jurist that we would hope you would see, as we do, is desperately needed for the court in the 1970's and in the 1980's. These considerations take on more weight when one considers the tremendous problems which our country will be facing during those decades.

I might close by raising a different kind of troubling question because we now have had some indication from the questioning that has gone on, and I have attempted to follow it as closely as I could, that the nominee has attempted to make some distinction, to our surprise, about his position in connection with the Gray Commission and the pupil placement schemes that allowed parents, white parents, to take their children out of the public school systems wherever there was an opportunity or a chance that there might be an integrated school system and send them to private schools at the expense of the State. On that note, I would conclude my remarks and with the kind indulgence of the Chair, ask if my counsel be permitted an observation in connection with this statement on the nomination.

(Mr. Conyer's prepared statement follows.)

TESTIMONY BEFORE THE SENATE JUDICIARY SUBCOMMITTEE CONSIDERING THE NOMINATION OF LEWIS F. POWELL TO THE SUPREME COURT OF JUSTICE PRESENTED BY THE HON. JOHN CONYERS, JR. MEMBER OF CONGRESS ON BEHALF OF HIMSELF AND MEMBERS OF THE CONGRESSIONAL BLACK CAUCUS

Mr. Chairman and distinguished members of the subcommittee, I appreciate the opportunity to testify before you on a matter of such great importance as the nomination of Lewis F. Powell as an Associate Justice of the Supreme Court.

In considering Mr. Powell or any other nominee to the Court, no one would deny the Presidential prerogative of examining a potential candidate's philosophy before placing his name before the Senate for confirmation. Nor is there any requirement of the type of philosophy a nominee should espouse. But it also follows