

## 21.02.27 New Voices At The Table Hour.wav

SM: Sarah McConnell  
LA: Lashrecse Aird  
EG: Ebony Guy  
PH: Paul Clinton Harris  
DH: A.E. Dick Howard

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SM In 2016, Lashrecse Aird made history as the youngest woman ever elected to the Virginia House of Delegates and one of her first assignments was serving on the powerful House Appropriations Committee.

LA I remember sitting around the table with a group of colleagues, largely older white men, and we were debating funding for an educational program that I actually participated in for at-risk youth.

SM As one of her colleagues was arguing to defund that education program, Lashrecse pointed out that she was actually living proof of the program's success.

LA The legislator said to me, "You could not have participated in this program because it's for at-risk youth who are experiencing hardship". And I literally had to explain that I was one of those people that experienced hardship. And so ultimately, it really takes people with lived experience to show up at these tables to demonstrate to others who have not been exposed, why some of the policy measures we're fighting for are critical and necessary.

SM From Virginia Humanities, this is With Good Reason. I'm Sarah McConnell. Today, New Voices at the Table. Lashrecse Aird was only 28 years old when she became a member of the Virginia House of Delegates. Since 2016, she's represented the 63rd District, which includes Petersburg and parts of nearby counties. Lashrecse says her unique perspective is shaped by a childhood of hardship and adversity and allows her to better serve the full range of experiences within her constituency. Lashrecse when you were elected four years ago, you were the youngest woman ever elected to the House of Delegates in Virginia, but you grew up in Buffalo, New York. How did your childhood there inform your political activism in Virginia?

LA Growing up in Buffalo and being born to a mother that was only 16 years of age comes innately with its own set of hardships. I grew up experiencing adversity very early on, things like homelessness, going without water sometimes, witnessing my own parents get evicted. And those hardships, they live with me. I can vividly remember the emotions associated with them. And now I'm able to pour those emotions into actual policy to work to prevent other families from feeling the same way and going through those same sets of hardships.

SM What was it like being so young and an African American woman and mother when you first came into the floor of the House of Delegates? Virginia is a government dominated by white men since the founding era, right, since Jamestown.

LA That's right. You know, I believe that showing up in the halls of the Virginia Capitol as a young Black woman, to me it felt right. It felt timely, both from a policy standpoint, but also

from a cultural standpoint. I can say in all honesty, on both sides of the aisle, there were representatives who would have liked to easily dismiss me because of my age, first and foremost. That is the one commonality I found regardless of if they were Democrats or Republicans, you often are minimized if you are younger. Oftentimes age is associated with your knowledge and expertise, which I believe I've proven is not the case. But I honestly have to say that I was very deliberate in making sure that every time I open my mouth, I was prepared, I knew what I was talking about, and I did the work from the day I walked in the door. And that helped me because I was appointed to prominent committee assignments at the onset, which ultimately helped leverage getting the needs addressed in my community much faster.

SM Give me some examples that you notice, I've heard you say, "I know these things to be true, but it's often hard to persuade colleagues they're true".

LA That's right. So, I'll give you an example. When I was first elected, I was placed on the Appropriations Committee, which allows members to decide what's going to be funded and not funded in our state government. I remember sitting around the table with a group of colleagues, largely older white men, and we were debating funding for an educational program that I actually participated in for at risk youth. And one of the lead men on the committee explained that they were not going to provide funding for this program because the data could not clearly indicate its success. And I shared my experience of personally going through this program and an attempt to dismiss me occurred. The legislator said to me, "you could not have participated in this program because it's for at risk youth who are experiencing hardship". And I literally had to explain that I was one of those people that experienced hardship. And it - were it not for this program, I may not be where I am today, and I may not have even attended the college that I went to because it was - it was a college preparatory program. And that level of inability to understand is rampant through our body. And it really takes people with lived experience, authentic experience, to show up at these tables and in these seats to demonstrate to others who have not been exposed, to why some of the policy measures we're fighting for are critical and necessary.

SM You played an integral part in passing the country's first Brionna Taylor bill, which prohibits no-knock warrants by police. What motivated you in that personally and in terms of your beliefs and what you've experienced?

LA The movement to pass the Brionna Taylor Law started with, Say Her Name, because we were just on the heels of the tragic death of George Floyd, but no one was paying attention to what happened to Brionna Taylor. And as a young Black woman, I recognize the everyday fight to be valued for what I stand for, for what I believe in, and for what I fight for. And when the governor called a special session to declare us to address criminal justice reforms, I automatically knew we needed to pass the Brionna Taylor Law. Specifically, because our code was silent on the execution of no-knock search warrants. We are a pro-gun state. And I recognize because I've lived in them, the over-policing that often occurs and Black and brown communities as a result of the failed and/or attempted war on drugs.

SM Have you or your family ever experienced that kind of over-policing?

LA As a young girl while I was still in Buffalo, I vividly recall a visit. Every time I close my eyes, I can see the red and blue lights as we open the front door in what was largely a residential but poor Black community. And I remember law enforcement merely showing up, asking if my dad was there and I don't remember all the details, but I remember the

event turning into them entering our home in searching for him. And that search, ironically, was for a drug charge that in today's terms, we would largely chop up to be for recreational use.

SM After the summer following the killing of George Floyd and the social justice movement that took to the streets to protest the sort of treatment. Did anything for you fundamentally change personally? Did - did you gain strength and encouragement?

LA I can remember after the social unrest and protests that we saw playing out all over the country. But even in Virginia, a lot of I'll just be honest and say white people would ask me, "how are you doing? Are you okay? Is there anything I can do? What should I be doing in this moment?". And while there was a level of exhaustion, because the very things we are fighting over right now, we've been fighting over for generations, I felt extremely energized. I felt like this is the moment for Black leaders everywhere to push the envelope in a way that we have not ever had the opportunity to do. And that's largely because - and this is going to sound a little crass - but because white people are actually caring. And so, while we - while we have so much collective energy around reforming these systems and structures that have been harming Black and brown people since the beginning of time, let's dig in deep and correct them.

SM How much do you worry white people are going to sink back into complacency?

LA Oh, it's already happening. White people are already falling back into complacency. And that's why, unfortunately, you hear this argument that, "no, we shouldn't protest" and "no, we shouldn't have people in our streets". But that is the only thing that seemingly gets the attention and priority of those who are not living through these hardships, living through these vulnerabilities. And so I think there is a lot of work that still needs to be done and the hard part will be to continue to remind those who claim to be allies, while this work is both critical and necessary, not even just for Black and brown people, but for everyone. Because ultimately, when Black and brown people do well, white people do well, and we do well as a society overall. And I think that has largely been missing from the conversation. There is a perception that these changes are just to benefit one group of people over another, and that's just simply not true.

SM Lashrecse Aird, thank you so much for talking with me on With Good Reason.

LA I'm thrilled to have this conversation with you tonight. Thanks so much for inviting me to be on.

SM Lashrecse Aird as a member of the Virginia House of Delegates representing the city of Petersburg in the 63rd District.

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SM We don't think of activism as hereditary, but for my next guest, it definitely runs in the family. As a teenager, Ebony Guy was inspired by her grandmother, Cora Tucker, a beloved civil rights leader from Halifax County, Virginia, now a board member at Virginia. Organizing Ebony's activist work has revolved around voter education and political campaigns. Ebony, you have been an activist since you were 17. What at first got you interested in becoming an activist so early on?

EG Well, a lot of my story starts with my grandmother, her name is Cora Tucker. She got us involved in civic action at a young age. I can vividly remember being about 12 or 13 years old, handing out sample ballots on Election Day. And that was the beginning, the early stages of my activism. And then I just, at 17, just wanted to do something different and just kind of dip my toe, if you will, into civic engagement and social justice work.

SM What are some of the campaigns you've been involved in that have really energized you, that have felt like a success?

EG I like many people, my watershed moment or the catalyst for, you know, diving deeper into organizing was then-Senator Obama's first presidential campaign and the second one in my town of Halifax County. We raised voter registration by, I want to say, 11 percent that year, something that nobody even, you know, some hardcore facts and figures - people could not really understand what we did, but we did it anyway. So I feel very proud that, you know, even though I play - I feel like I play a small part in it. But, you know, I was a part of a group that, you know, really started to kind of shift Virginia politics.

SM When Obama was elected president in 2008, it was the first time in 40 years that Virginia had voted for a Democratic candidate for president. What was your reaction?

EG I was very emotional. I cried and people, you know, were calling me all night just saying, like, "oh I know your grandma is so proud and she's just dancing in heaven" and, you know, all these things. And it was just, you know, and it was kind of like a full circle moment, you know. If it wasn't for the Cora Tuckers of the world, you know, the people who may not get, you know, all the glitz and glamor, like, you know, Dr. King or John Lewis or a James Baldwin - it's these people in small communities. You know, there's a Halifax everywhere. It goes by a different name, but there's this - you know, there's a small town everywhere like Halifax County. And being a part of something, so seemingly unreachable is because of the work of people like my grandmother. So, again, it was like a full circle moment for me, truly humbled to be a part of that experience.

SM How has the social justice movement that emerged after the death of George Floyd impacted you and your work as an activist?

EG When - and I call it a murder - when George Ford was murdered, I was very angry. One, this is happening again. Two, you know, we literally watch this man, you know, take some of his last breaths. And for me it just was like, okay, this is where I stop educating people about Black Lives Matter. I'm officially done, like, if you can't see why we are, you know, in the streets or why we're petitioning to our legislators and different things like that - if you can't understand after today why we say Black Lives matter, you may be too far gone for me. You know, I'm not the person that you need to have a conversation with to understand, you know, why we are tired of seeing this movie over and over and over again.

SM If said it was so frustrating for you to watch kids you grew up with - white kids that you went to elementary school and high school with - in the wake of this summer's social justice movement, not fully understand how horrifying and demoralizing this whole experience has been, right?

EG Yes, it was very disheartening. People that I've known since, you know, kindergarten, like we've gone through every stage of life together up to high school graduation. But, you know, these people that, you know, we worked along with, we played with in school and,

you know, sang in choirs. And instead of talking about the issue of systemic racism, they would talk about statues or they would talk about the Confederate flags. You know, they're talking about their pride and heritage. And I use air quotes when I say that. But, you know, you're not talking about why it's happening. Why are people getting so up in arms, as it were, about these Confederate flags and statues, like why aren't we have that conversation? You know, there was one friend of mine and probably 20 or so years ago, I was a bridesmaid in her wedding. You know, she had gone on a few tangents about why the statue's been removed, and she doesn't have a way to show her son his history outside of a concrete monument. And I just had to, you know, make my peace with, you know, I think she's a little too far gone for me and, you know, just kind of cut ties. Unfortunately, you know, like you want your son to understand history and, you know, his heritage, if that's what you want to teach him, I want my son to live. I don't want my son to be detained. I don't want my son tazed or pepper sprayed simply because he is Black.

SM Do you think the glass is half full or half empty when it comes to making progress in these arenas?

EG There's a glass on the table, some days the glass is half full and sometimes it is half empty. You know, over the summer I did see some inches towards progress with better allyship. And with the new administration coming in, I think that they are trying to correct some of the wrongs done by the previous administration. And then other days, even with the vaccinations for COVID, you take 10 steps back because there are a lot of people, again, in the community who may not have access to the Internet. They don't know how to register for vaccinations. They may not have access to get to a vaccination site. So it depends on the day. But every day there's a glass on the table and with that glass on the table, there's always opportunity for advancement.

SM Ebony Guy, thank you for sharing your thoughts with me on With Good Reason.

EG Thank you so much for having me.

SM Ebony Guy is an activist from Danville, Virginia, and a board member at Virginia Organizing. My next guest is from the other side of the aisle. Paul Harris became the first African American Republican elected to the Virginia legislature since 1891, and he grew up in poverty not far from where his ancestors had been enslaved at Thomas Jefferson's home, Monticello. In fact, he won election to the very seat once held by Thomas Jefferson. Paul Harris is now vice president at the military shipbuilder Huntington Ingalls Industries, and he talks with me about his unlikely path to political office.

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SM Paul, tell me about your family connection to enslaved families at Thomas Jefferson's home, Monticello.

PH Yes, so I had always heard growing up that there was a connection. And in fact, some of my older relatives used to invite us to have picnics on the ground of Monticello when I was a kid. But I had never learned of any definitive connection until much later in life. I recall once when I was in fourth or fifth grade, we went on a field trip to Monticello and towards the end of the day, they allowed the students to go into the gift shop to purchase something. And I remember looking at the postcards in the gift shop and I saw a Black woman dressed in period costume. And as I looked closer, I thought, wow, she looks a lot like my Aunt Lucy. So I bought the postcard. It was maybe five cents and brought it home

to show to my mother. And I said to my mother, you know, "this lady looks a lot like Lucy to me". And she looked at the card and she said, "That is your Aunt Lucy". And she went on to explain that every year folks from Monticello would come by the house and have her mother line the kids up and they would decide which of the kids they wanted to use for photos that year. And so I guess one year they selected my Aunt Lucy, put her in period costume and used her for the postcards at Monticello. So since then, I've learned that there is a connection and it's been verified by historians. And I feel enormously proud to be a descendant of enslaved families at Monticello and, of course, this all came full circle in 1997 when I was elected to Thomas Jefferson's seat. So it's funny how these things work.

SM It's amazing that you actually grew up where you could see Monticello at the top of a mountain not far from where you were living, right?

PH Yes. I could literally see Monticello from where we lived and on Sundays, we attended church at my mother's church - the church that she grew up in as a child, which is in a small community, maybe about two and a half miles from Monticello called Rosehill. So to get to Rosehill Baptist Church from Charlottesville, we'd have to drive up the mountain pass, Michey Tavern and passed Monticello on Route 53 to get to Rosehill Church. So we passed Monticello frequently and very often my mother would tell the stories that others would tell in the family about our connection to Monticello. So, it's sort of an odd experience to grow up in the shadow of Monticello, but I wouldn't trade it for anything.

SM When you won the seat that Thomas Jefferson had once held and went to Richmond to represent your constituents, how did you serve the African American community, that portion of your constituents in particular, would you say?

PH Yes. So, I was always bothered and emotionally impacted by the fact that many of my friends growing up were relegated to special-ed classes. So, when I was elected, I started to make my rounds to the local schools. A lot of rural schools that were populated mostly by African Americans in my precinct. And what I found in visiting these rural schools, was that as much as 22 in some cases, 25 percent of the students - the African American students - were in special education. So, I developed a local review board to look into this more and they came back with results that, you know, showed that, in fact, a disproportionate amount of African Americans were winding up in special education. And so I took this study that I had conducted locally with citizens back to Richmond and had a statewide study commissioned to look into this problem. And they were still working on this when I resigned my position in 2001 to head to Washington to join the new administration at the U.S. Department of Justice.

SM What else do you think you noticed in particular as a Black delegate holding that seat?

PH I think another thing that I noticed as a lawyer in particular was that there had been no Black judges in Charlottesville or Albemarle County. And so, one thing that I did was to reform the process for electing judges. There are many members of the African American community who don't feel comfortable going to courthouses or going to police stations. And as it turns out, these were common venues for the judicial selection process. So, you know, when candidates would submit their names for nomination to become a judge or the local parties would have these sort of community outreach or public hearings, they would call them, I suppose, in county courthouses or near the city hall, which oftentimes are co-located with police departments. So, I wanted to move that process closer to the people. And so I did that. I formed a citizen board to nominate judges. And so, they held meetings in the local Baptist churches, in Black neighborhoods, for example, rather than at the

county courthouse. And the result of this revised process was that we ended up with the first Black judge in Albemarle County, Dwight Johnson.

SM We're just pulling out of a long period following the death of George Floyd at the hands of a police officer. With the long view from your career as a proud conservative Republican and the father of Black children, what - what is your take on the experience we've just gone through this year?

PH Well, the George Floyd death was devastating for everyone with a conscience and a heartbeat. It reminded us of, I think, as a nation of several things. I mean, one, that evil does have a face. And it - it also, you know, brought to the surface some of the deep divides that still exist in our country. But for me personally, it was a time to sort of step back and reflect on, what can I do in my community on a day-to-day basis to make a positive difference in this world? And I hope that a lot of others have taken that same perspective on the Floyd incident. And I just - I fear and lament the fact that it became, you know, used as a political tool, I think, on both sides.

SM Any ideas? I mean, I think so many people share that sentiment and actually wish to find some sort of common ground. What would you suggest, as first steps in that direction?

PH Well, I think, you know, basic humanity and decency is always a good place to start. For me, you know, I see racism, discrimination and everything that's associated with those evils as sin. And the less we look at each other as Black, white, brown or whatever skin color we have and more as creations of a God who loves us all the same, I think the better off we will be. So I'd say a good place to start is just getting to know your neighbors and treating your neighbors with respect and civility.

SM Paul Harris is vice president and chief compliance and privacy officer with Huntington Ingalls Industries. This is With Good Reason, we'll be right back.

[00:28:00]

SM Welcome back to With Good Reason at Virginia Humanities. In 1992, Virginia changed its constitution to make sure that segregation would be the law of the land and to make it virtually impossible for African Americans to vote. That constitution remained in place for the next 70 years. Fifty years ago, the Constitution was finally amended, removing the racist provisions. My next guest, A.E. Dick Howard, headed the commission that amended the Constitution. Dick Howard is the Warner-Booker Distinguished Professor of International Law at the University of Virginia. Dick, until it was revised in 1971, the Virginia Constitution had enshrined white supremacy as the law of the land. Why so? When had that happened?

DH That happened in Richmond in the convention of 1901/1902. The context was the fact that after the Civil War, the Confederacy had been defeated and the union was triumphant. In order to be readmitted to the Union, the former Confederate states had to agree to write new state constitutions. And in Richmond, that was the so-called Underwood Constitution. Former slaves and other Black members in the convention wrote a very progressive constitution which enshrined, among other things, Blacks being able to vote along with whites. It was, in effect, a modern constitution. Well, a generation later, after reconstruction was over, southern states then began to write post-reconstruction constitutions. They wanted to get rid of those progressive documents that had been written in the wake of the civil war. So in Richmond, in 1901/1902, the convention met and it had as its avowed

purpose, white supremacy. The debates in that convention are crystal clear, they're really quite shocking to the modern sensibility because the delegates of the convention made no mistake what they were about. They were going to set out to disenfranchise every Black Virginian that they could, and they achieved that grim purpose with great efficiency. They used the poll tax, they used a complicated registration requirements if you went to register to vote. The registrar could open the state constitution to any place and ask you to interpret some section of it. Well, that was clearly intended to prevent Blacks from voting. So the result of the 1902 constitution was widespread disenfranchisement, not only of Blacks, but indeed a lot of poor whites at the same time who couldn't pay the poll tax. So that was the status quo of the old constitution. And if you read the debates of it, page after page, you find the delegates are making it clear, "we're here because we're white. We don't want Blacks in the state government. They don't belong - they're not qualified. We're the ones who ought to be running the shop". And it's perfectly clear what they were about. They set out to enshrine white supremacy.

SM Were their opponents of it? Were there - were their loud voices crying out for keeping fair and equitable voting rights in the Constitution.

DH There were virtually no voices of that kind. There were a handful of Republicans who were perhaps a little bit more moderate in their views. But there were very few delegates who actually spoke out against the core purpose of the convention, which was Black disenfranchisement.

SM Give me a taste of what sorts of things were actually said.

DH Carter Glass, who was the floor manager of the franchise provisions of the proposed constitution, was asked by another delegate, "won't these provisions to discriminate?" and Glass's answer was "Discriminate? What do you think we're here for? The people sent us here to get rid of Black votes and we're going to do that just as far as the provisions of the U.S. Constitution will allow us". And they thought they had pretty much carte blanche. The Supreme Court had approved a Mississippi constitution in that same time period. And so, the - the delegates in Richmond knew they had a green light to go ahead with disenfranchisement.

SM When had reconstruction ended and why did it take Virginia so long to re-enshrine white supremacy in its constitution?

DH Reconstruction came to an end in 1877 when the last federal troops left the south. It was a result of the contested presidential election of 1876, and part of the bargain then was to withdraw federal troops. It took the conservative Southerners a few years to sort of regroup. They began to pass Jim Crow laws, Black laws, they were called. They knew they couldn't re-enshrine slavery as such, but they certainly meant to turn the clock back as far as they could. So, Mississippi led the way and other states followed. Virginia took a little bit longer because, interestingly enough, Black votes actually often were the balance of power in a number of counties, especially in Southside Virginia, where the Black population was rather rather large. And there was a so-called Readjuster Party that wanted to readjust the state's debt. And that party and its leaders actually looked to Black votes. So that had to be cured through some state statutes before finally the Constitution surfaced and was - when it was rewritten.

SM And there was no outcry for changing this racist constitution after 1992 for nearly seven decades?

DH I think that's right. It's - I mean, that was a very bleak period in American history. You had in Washington, Woodrow Wilson was president and he actually - he was a Southerner by birth. He actually brought about resegregating the civil service and the federal government. The Ku Klux Klan had - was at its height in membership, there were millions of Americans, not only in the South who belonged to the Klan. And frankly, it was a period of pervasive racism, especially in the South, but in the north as well, because in the north, many people were concerned about immigration. Immigrants were coming from southern and Eastern Europe, from places like Italy or from Eastern European countries, and they were different from the traditional American. So in the north, you had antagonism to immigrants. In the South, you had antagonism to - to Blacks. So in a sense, there weren't that many people. There were some voices, of course, but by and large, the country was in a mood not to make much of a fuss about what was happening in places like Virginia.

SM You grew up in Richmond, Virginia, and had Virginia schooling. Did you learn about the 1902 constitution and how it had enshrined white supremacy during your schooling?

DH No, I did not. The state constitution was not something I remember studying in K-12, nor in college nor indeed, I don't remember my law professors talking about the state constitution. So the 1902 debates that I've mentioned, I didn't read those until I started working on the present Virginia Constitution. I knew I had to do my homework and - and say, where in the world did this 1902 constitution come from? And so reading those debates was frankly an eye-opener to me. And then beyond that, I began to realize that the problem of racism and white supremacy and the like reflected in the 1982 constitution was not just a Virginia problem, it was not just a Southern problem, it was an American problem.

SM So when you directed the commission to finally revise this racist constitution in the late 1960s, who had called for such a revision, was it that the Virginia populace was now clamoring for it? Or was there something at the federal level hanging over the heads of the state?

DH It's interesting to think about the period. If you think about what was going on in the 1960s, it was a turbulent era of assassinations, John Kennedy, Robert Kennedy, Martin Luther King had been assassinated, arson and looting and violence in American cities, the beginning of the Vietnam War protest. I mean, it was a time of great upheaval. It was also a time in which the federal government, both the Supreme Court and Congress, put increasing pressure on arrangements like the ones that Virginia had. And I think, for example, of the Voting Rights Act of 1965, I think of the Supreme Court decision striking down the poll tax in Virginia. And in particular, I think of the one person, one vote decisions which required Virginia and the other American states to redraw their legislative maps. So there were very important movements taking place from the federal level, which put increasing pressure on Virginia.

SM How did it put pressure on Virginia? What must Virginia do and what consequences otherwise suffer?

DH Well, the Voting Rights Act resulted in an increase in the enfranchisement of Virginians who was not you were not allowed to discriminate on the basis of race. And in the polling place, the one person, one vote meant that there was a shift of power from the overrepresented rural areas of Virginia to the underrepresented urban areas. Also, it was a time that Virginia was becoming a two-party state. When the Republican Party was

resurgent, they were able to build on the resentment of many conservatives to what the federal government was doing so they - no longer did you have a Democratic Party lock on the election system.

SM And the Democrats in Virginia at that time and throughout the South was the party that was most likely to suppress the Black vote?

DH That's exactly right. Most Southern states had some kind of political machine, sometimes based on personality in which they depended on a restricted electorate. Virginia was like that in the nineteen fifties and sixties until one person, one vote. Until the Voting Rights Act, we had in Virginia, a political machine that had been in place for decades, it tightly controlled the electorate, and part of that was suppressing the Black vote.

SM So who finally called for a revision to the state constitution? Was it the governor at the time?

DH One of the ironies of the constitutional provision was that it was initiated by the governor, a man named Mills Godwin, and he had been a supporter of massive resistance, the Southern resistance to Brown v. Board of Education. The traditional leadership in Virginia, as in so many Southern states, had been against Brown, tried to keep schools segregated by race. Hugely against them, I mean Virginia was one of the leaders in massive resistance and rolling out any number of measures to try to prevent the schools from being desegregated. Mills Godwin, the governor in '68, had been part of that movement. So it's therefore doubly ironic that he was the one who initiated revising the state constitution. So he - he proposed to the legislature that a commission be appointed and then Godwin was the - was the one who appointed its members.

SM Why did Godwin see a need in 1968 to have this constitutional revision?

DH I think the pressure was building, that it was increasingly clear that the 1902 constitution, the white supremacy constitution, simply couldn't stand. Whatever Virginia might do, they couldn't continue to live under this turn of a century constitution. And I think there may have been a mixture of motives here. Godwin belong to the traditional leadership of the state and that included business leaders. And in the late 60s, some of those business leaders were concerned that investment in Virginia by out-of-state corporations and the like would not take place, that Virginia needed to worry about good schools and not be preoccupied with matters of racial segregation, that we had to move on from that. For some of them, I think they thought it was simply the right thing to do to move into a new era. But there may have been motives of business interests as well.

SM So what sorts of people formed the commission?

DH The members of the commission were very much drawn from the traditional leadership of Virginia, the sort of elite level. It was not a commission with radical members. There was a Black member of the commission, the leading civil rights attorney in Virginia, a man named Oliver Hill. He was, in effect, the Thurgood Marshall of Virginia. He had been arguing the school desegregation cases, so he was clearly a voice for progress. The other leaders, you might have thought, might be a bit - I mean, they were, I think, temperamentally conservative. One member, Lewis Powell, who later sat on the U.S. Supreme Court, it had two former governors of Virginia, a former president of the University of Virginia. It had law school dean who later said on the World Court at The

Hague, but their idea of reform was more conservative than not. But I think they realized the proposed revised constitution would have to be approved by the legislature and then finally approved in referendum by the people. So if the revised orders had gone too far, too fast, the whole project might have simply collapsed. Either in the legislative process or been defeated at the polls.

SM Give me an example of one provision that was amended that had been racist. That was - where you had to consider too far, too fast. Do you know what I mean?

DH Indeed. I think the best example I can give would be the article on education. There was also the question of equitable funding of schools. We had enormous discrepancies in Virginia, as so many states did have then and still have today between rich and poor school districts. So that was an issue that was surfacing right about the same time that this revision took place. So one approach to that would have been putting a right to education of a kind in the Constitution that would have empowered courts to step in if the legislature didn't get it right. The commission thought about that, but pull back from that basically. So what they did as a kind of a middle ground was to - first they would require that schools to stay open in Virginia. That was clearly a repudiation of massive resistance. Under the new constitution, localities and Virginia counties and cities are under a constitutional mandate to run the schools, they can't close the schools. But then the Constitution says that the General Assembly shall seek to ensure quality schools. The original language had been that they were under a mandate to ensure quality education. That could have been enforced in court. So they dropped back to - back to sort of more modified language, "seek to ensure", which sets up an aspiration which is not necessarily enforceable in court. That, I think would be an example of the sort of careful middle ground that the commission sought.

SM Give me another one, please. That's fascinating.

DH There was an interesting discussion within the commission between two members on a proposal that dealt with civil disobedience.

SM Which two?

DH Lewis Powell, the future Supreme Court justice.

SM A conservative man.

DH Very conservative, philosophically, temperamentally. And the other member was Oliver Hill, the African American member who had been the chief litigator of the school desegregation cases. And these two men came from very different walks of life and temperamentally had different outlooks on public issues. And at one point during the commission's discussions, Lewis Powell, the conservative lawyer, said there ought to be a provision in the Constitution about obeying the law, the rule of law, because he was concerned about the - the riots and the violence and the upheavals in American cities in 1968. So he wanted a strong provision in the Constitution about obeying the law - about the rule of law. Well, Oliver Hill said that won't do for my people, which is to say African Americans, because the rule of law has not served them very well. The law has been used to oppress them. So they came up with a compromise formula, which is in the language of the present constitution that said that people do have an obligation to obey the law in a regime where due process is afforded. It incorporates, on the one hand, the rule of law,

Lewis Powell is concerned with Oliver Hill's concerns that Black citizens in Virginia would get due process of law.

[00:45:48]

SM How striking it is that we're still having this argument, the progressive and conservative divide over law and order and its racial implications.

DH You know, that's right. It raises the question whether the Constitution, this one or some other constitution could be written and adopted today. And I doubt that it could, because you didn't have the partisan divisions, which are so obvious throughout the country today when it went to referendum, got 72 percent of the vote. And it's hard to imagine today in the atmosphere we live in that 72 percent of people would agree on anything.

SM Totally true. So go over again for me what the most important parts of the 1902 constitution were that were changed.

DH Race and education, the 1902 constitution expressly provided for segregated schools. So the Constitution made it clear as a matter of fundamental law that the two races were to live separately. The other part was, of course, the franchise - voting, participation in public affairs, that the 1902 constitution used a number of techniques; the poll tax, complicated registration requirements and the like, to make it virtually impossible for Black citizens to vote. Those two features were both addressed in the current constitution. Now on the voting side, on the discrimination side, the racial side, the Constitution of Virginia had never had an anti-discrimination clause. So the new constitution now has an express provision that says there shall be no governmental discrimination on the basis of race, color, national origin, and by the way, sex. None of those things has been in the old constitution are now in the new one. So there are explicit commands to the legislature and aspirations for the people of Virginia to put behind us as best we can the white supremacy, racially motivated sort of earmarks of the old Constitution.

SM Were there any portions that the commission should have undertaken or considered, but was very ginger about and decided to leave alone?

DH Well, I think one important area would be education. There ought to be some way of putting muscle into what the legislature does in the world of public schools. And yet, if the Constitution had provided for that kind of muscle, which is to say, letting the courts enforce the constitution, that would have clearly gone too far, would not have been acceptable either to the legislature or to the people that voted on the Constitution. So the compromise there was simply to put in language, which first was aspirational. The commission put education in the Bill of Rights along with more traditional rights, like free speech or free exercise of religion. And then in the education article, they set it up so that the Board of Education would have the initiative to create quality schools, but the legislature would have the final word. And that seemed to be a palatable sort of middle ground that was acceptable to enough people to move the whole process along.

SM Looking back on this 50 years later, what would you say was left undone? What would you change today?

DH One is restoring the voting rights of former felons. Virginia has one of the strictest rules on restoring voting rights after one has served his or her time and you're back in society again, you ought to have the full rights of citizenship. I mean, being able to vote is one of

the earmarks of proper citizenship. If I were doing it, I think I'd have some process where re enfranchisement would be automatic once one had paid his or her debt to society. I think it would be something to underwrite racial justice because so many of the former felons are African Americans. Persons of color are disproportionately represented in the ranks of those people convicted of felonies. So, I think that's something in which if it were in my hands I would love to see it happen. A second area would be drawing legislative districts. Partisan gerrymandering is one of the cancers of American democracy. We're beginning to make a move in that direction in Virginia, we just - the voters just approved a constitutional amendment to create a bipartisan commission, part legislators, part citizens to draw legislative district lines. I personally would have gone farther than that, I think you would have been better to have a completely independent citizens' commission. But maybe that's one of those areas where compromise may have to carry the day, that - that might do it.

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