1997

A Segregationist on the Civil Rights Commission

James R. Sweeney
Old Dominion University

Follow this and additional works at: http://digitalcommons.odu.edu/history_fac_pubs

Part of the American Politics Commons, Political History Commons, and the United States History Commons

Repository Citation
http://digitalcommons.odu.edu/history_fac_pubs/9

Original Publication Citation

This Article is brought to you for free and open access by the History at ODU Digital Commons. It has been accepted for inclusion in History Faculty Publications by an authorized administrator of ODU Digital Commons. For more information, please contact digitalcommons@odu.edu.
A SEGREGATIONIST ON THE CIVIL RIGHTS COMMISSION

John S. Battle, 1957–1959

*James R. Sweeney*

In November 1957 President Dwight D. Eisenhower chose former governor John S. Battle of Virginia to serve on the newly created United States Commission on Civil Rights. The president's appointment of Battle, a segregationist, to the nation's most important agency charged with investigating civil rights violations created a difficult situation for both Battle and the commission. Although he had some concern for the rights of African Americans, Battle was a staunch defender of the racial conventions of southern society. His service on the commission is therefore important as a case study of how a commitment to maintaining the separation of the races prevented a respected white southerner from making a positive contribution to resolving America's preeminent moral problem of the mid-twentieth century.

In the tense political atmosphere following the Little Rock school desegregation crisis, Eisenhower strove for a commission that would have what he called a "very ameliorating effect on these aroused feelings, prejudices, [and] passions."1 To most southerners in Congress, however, the mere idea of such a panel was anathema. Senator Harry F. Byrd, Sr., of Virginia, citing the commission's broad mandate and subpoena powers, denounced it as "a vehicle for witch-hunting at its worst, and dangerous beyond the comprehension of most living Americans."2

---


2 Harry F. Byrd, Sr., speech, 16 July 1957, Harry F. Byrd, Sr., Papers (#9700), University of Virginia Library, Charlottesville (hereafter cited as ViU).
When John Stewart Battle (1890–1972) stepped down as governor in 1954, the Washington Post called him “the most universally popular figure in Virginia public life.” Battle had hopes of succeeding Harry F. Byrd, Sr., in the United States Senate in 1958, but the prospects of a contest between Battle and former governor William M. Tuck for the Senate seat made Byrd change his mind about retiring.

Believing that “all types of thinking” should be represented on the bipartisan commission, Eisenhower sought a balance between northern and southern viewpoints. The northern members were presidents John A. Hannah of Michigan State University and Father Theodore M. Hesburgh, C.S.C., of the University of Notre Dame and Assistant Secretary of Labor J. Ernest Wilkins, the only African-American commissioner. From the South came Battle, Dean Robert G. Storey of Southern Methodist University Law School, and former governor Doyle E. Carlton of Florida.3

The selection of Battle to serve on the Civil Rights Commission raises the intriguing question of why the president appointed a segregationist. At his confirmation hearing, the Virginian revealed the major reason why Eisenhower had chosen him. Battle recalled that Sherman Adams, assistant to the president, informed him of Eisenhower’s belief “that it might be

---

3 Dwight D. Eisenhower, news conference, 30 Oct. 1957, in Public Papers of the Presidents: Eisenhower, 5:783 (quotation); Public Law 85–315, 85th Cong., 1st sess. (9 Sept. 1957); Dulles, Civil Rights Commission, p. 18; Harris Wofford, Of Kennedys and Kings: Making Sense of the Sixties (New York, 1980), p. 463. Originally Eisenhower named former Supreme Court justice Stanley F. Reed chair of the commission, but Reed withdrew his name before confirmation. His replacement was Doyle E. Carlton, a former governor of Florida (1929–33). Hannah was named the new chair.
On 3 January 1958, members of the Commission on Civil Rights were sworn in and received their commissions from the president. Standing left to right are J. Ernest Wilkins, Theodore M. Hesburgh, C.S.C., John S. Battle, Doyle E. Carlton, Robert G. Storey, Dwight D. Eisenhower, John A. Hannah, and presidential assistant Sherman Adams. Although *Time* had described Battle as “a resonant voice for political moderation,” he often clashed with the other commissioners, particularly Wilkins. Chairman Hannah remembered, “In some of our earlier meetings, we found that we were far apart in our basic thinking. At times it appeared it was going to be very difficult, indeed, to make real progress.”

helpful if there was some member of the Commission who had . . . strong southern views.”4 Yet the appointment of someone to the Civil Rights Commission with such firm convictions on race and the validity of segregation created an inherent contradiction. Battle’s heritage and beliefs, and the political and social milieu in which he operated, militated against his making a significant contribution to the commission.

The president could have named any of a number of segregationists who had held political office to represent the white South on the panel, but he

---

selected John Battle. The Virginian's part in the 1952 Democratic national convention probably played a major role in his selection. The relatively new medium of television had given Battle national exposure. The convention had adopted a mild loyalty oath that bound delegates to support the decisions made at the convention, but Virginia, Louisiana, and South Carolina rejected it. In response, the convention's temporary chair, Governor Paul A. Dever of Massachusetts, ruled that those three states were not entitled to vote, but he did not ask the convention to expel the delegations. Some Virginia leaders, however, seemed to be courting expulsion. Battle, seeking clarification of Virginia's status, addressed the delegates. Speaking in a calm, conciliatory manner, the tall, distinguished Virginian quieted the chaotic convention. He pleaded that the Old Dominion be allowed the "freedom of thought and freedom of action" that had been "enunciated by Thomas Jefferson—in whose County I happen to live—the great patron saint of this Party." This four-minute oration reached an estimated radio and television audience of 75 million people.5

After Battle's remarks, the convention voted to recognize the Virginians with full voting rights. As historian Ronald L. Heinemann has pointed out, the decision to seat the Virginia delegation had more to do with the struggle between the forces of the opposing candidates at the convention than with the governor's eloquence. At the time, however, it seemed to many that Battle's words had averted the ouster of the three southern delegations.6 The governor made a favorable impression, and he left the Chicago convention with a much enhanced stature and the image of a constructive southern statesman.

Battle's role at the Democratic national convention led to further involvement in national affairs. In May 1953 he was appointed to a panel to revise the rules of the Democratic National Committee and the national convention. Eager to mollify southern leaders, the national committee adopted Battle's resolution to abandon the loyalty oath. As a member of


One of the results of Battle’s service on a panel to revise the rules of the Democratic National Committee was an abandonment of the loyalty pledge that had proved so divisive at the national convention in 1952. Fred O. Seibel celebrated the governor’s role in “Off With His Head!”

the platform committee at the 1956 convention, Battle played a major role in writing a civil rights plank that was acceptable to most of the South.7

The Eisenhower administration, specifically Sherman Adams, was also taking note of Battle. In September 1953 the Virginian accepted a post on the President's Committee on Intergovernmental Relations, a study commission to propose ways to eliminate friction, duplication, and waste in federal-state relations. When Battle declined another appointment in the summer of 1957, Adams told him that "we will be in touch with you again," a promise he soon kept. It is likely that Adams played a major role in the choice of Battle for the Civil Rights Commission. Notes of a telephone conversation between the president and his assistant on 11 September 1957 indicate that Eisenhower preferred former governor Colgate W. Darden, Jr., who was serving as president of the University of Virginia, to Battle. A list of suggested nominees in Adams's handwriting in the papers of presidential assistant E. Frederic Morrow, however, includes Battle's name, but not Darden's. Adams and Battle had served as governors of their respective states in the early 1950s, and their correspondence indicates a cordial relationship.8

There is also evidence that Senator Richard B. Russell of Georgia, who had led southern opposition in the Senate to the Civil Rights Act of 1957, recommended Battle's appointment. A week after the announcement, Russell informed Battle that he was "very happy indeed that I was able to play a small part in getting one real believer in constitutional government on this Commission." Harry F. Byrd, Jr., recalled that his father was also "very pleased" by the appointment, although he did not believe that the senator was involved in the selection.9

Battle was reluctant to accept a position on the Civil Rights Commission. He knew that his nomination would be "subject to criticism," but a strong sense of duty motivated him. He explained to a friend that senators Russell, Byrd, and Sam Ervin of North Carolina were influential in his decision to accept. Battle recalled that when these colleagues "insisted that I might be of service in presenting the views of those who believe in maintaining segregation, I yielded to their importunities and agreed to

---

8 "Battle Is Named To Federal-State Study-Commission," ibid., 19 Sept. 1953, p. 1; John S. Battle to Sherman Adams, 15 Aug. 1957, Byrd Papers; Sherman Adams to John S. Battle, 19 Aug. 1957, John S. Battle Papers (#8599), ViU (quotation); notes on telephone call, 11 Sept. 1957, Ann Whitman File, Dwight D. Eisenhower Library, Abilene, Kansas (hereafter cited as KAbE); "Adams Recommendations for CRC," E. Frederic Morrow Records, Box 10, ibid. Battle refused appointment to the Tennessee Valley Authority's board of directors in 1957 because he had been closely associated in his law practice with private electric utility companies and because philosophically he had little enthusiasm for the TVA. The Adams-Battle correspondence may be found in the Battle papers at the University of Virginia.

Eisenhower named Sherman Adams, governor of New Hampshire, his chief of staff in November 1952. Adams, shown here second from the left in his White House office in March 1958 meeting with Werner Janssen, Howard Mitchell (the conductor of the National Symphony Orchestra), and Ralph Becker, pushed for Battle’s nomination to the Civil Rights Commission.

serve.”10 Most Virginia newspapers were pleased with Battle’s appointment and echoed the *Norfolk Ledger-Dispatch*’s judgment that he would be “A Strong Southern Voice” on the commission.11

Father Hesburgh remembered that Battle was “a quintessential southern gentleman—dignified, eloquent, wise.” Indeed, Battle’s roots in the South were deep. The first John Battle came to Virginia in 1654, and the governor’s most noteworthy ancestor, Cullen Andrews Battle of Alabama, was a staunch supporter of secession and subsequently a Confederate brigadier general. Living with John Battle’s family until his death in 1905, Cullen Battle had a profound influence on his grandson. The younger

---

10 John S. Battle to Joseph Addison Hagan, 8 July 1958, Battle Papers.
listened captivated for hours as his grandfather reminisced about what southerners referred to as the War between the States.12

Born in the post-Reconstruction era, John Battle viewed blacks paternalistically, a perspective that was hardly unusual for a person of his background and generation. As historian Peter R. Henriques has noted, Battle bore "no ill will" toward blacks but knew little about their thoughts and feelings. During his election campaigns he made no demagogic racial appeals. When he sought funds for black schools in 1952, he stated that Virginia should try to make those institutions equal to white schools because such action was "right," rather than because the courts required it. Of course, he did not question the rightness of racially separate public education.13

After graduating from the University of Virginia Law School in 1913, Battle began a career that combined law and politics. During his two decades of service in the Virginia General Assembly, he became both an ally and a friend of Harry Byrd, Sr., the leader of the dominant conservative faction of the Virginia Democratic party. In 1949, with Byrd's indispensable support, Battle overcame a serious challenge by Colonel Francis Pickens Miller to win the Democratic gubernatorial primary, which was tantamount to election. As governor, his chief accomplishment was an expansive school construction program, the first time state aid had been extended to localities for that purpose. In addition to providing desperately needed new facilities, the program of unrestricted state grants had another potential benefit. Battle knew that better schools for black students could strengthen Virginia's case to preserve its racially segregated school system against legal challenges.14

During Battle's governorship, racial issues played an increasingly prominent role. Early in his term he gave careful consideration to the clemency plea of the Martinsville Seven, a group of young black men who were sentenced to death for the rape of a white woman in 1949. Battle granted two stays of execution, but after listening to the arguments of those who contended that the defendants had not had a fair trial and that blacks and whites in Virginia received different punishments for rape, he denied clemency. As Eric W. Rise, the most recent student of the case, has written,

13 Henriques, "Battle and Virginia Politics," p. 188.
Battle’s denial illustrated his “innate conservatism.” The governor’s belief in segregation and his paternalistic attitude toward blacks “blinded [him] to the significance of racially disparate punishments.”15

Desiring a harmonious administration, Battle avoided taking controversial actions. His respect for the judicial process made him most reluctant to grant clemency, an action that would have overruled the decisions of the appeals courts. Finally, Battle was upset by leftists who proclaimed the innocence of the Martinsville Seven. Although he remarked that the “slanderous statements” of the Communist-supported Daily Worker and the radical Civil Rights Congress had not influenced his decision, he denounced their propaganda in strong terms. Reflecting the intense anticommunism of the early 1950s, Battle did not want to appear to be influenced by subversive organizations. The governor rejected all appeals for a further stay of execution or commutation of the sentences. The Martinsville Seven were electrocuted in early February 1951.16

One of Battle’s favorite anecdotes illustrates his inclination to view blacks in stereotypical terms. He enjoyed telling the story of Mayo, a black servant in the governor’s mansion, who had served many chief executives. Although the details of the story varied, the most authentic version seems to be the one Battle used in his address to the annual meeting of the Virginia State Bar Association in August 1954.17

Battle recalled that shortly after his election Colgate Darden told him that Mayo would “get drunk on the most important occasions” and would “embarrass you to death.” Soon after talking with Darden, Battle discussed Mayo with William M. Tuck, Battle’s immediate predecessor as governor. Tuck related that when Sir Winston Churchill visited the mansion, Mayo was so intoxicated that he dropped the distinguished visitor’s hat and coat in the hall. Tuck fired him. Soon afterward, Mayo came to the governor’s office and asked to see him. As he entered the office, Mayo said, “Governor, do you care if I pray?” Tuck did not object. Mayo knelt down and prayed: “Good Lord, Mayo has been a bad Negro. He has sinned, Lord. He has sinned against You and he has sinned against the Governor. You have forgiven him, Lord. Open up the heart of the Governor and make him forgive Mayo.” After the audience’s laughter subsided, Battle commented,

16 Rise, The Martinsville Seven, pp. 108, 132, 137–39, 143–44 (quotation), 153. See also Eric W. Rise, “Race, Rape, and Radicalism: The Case of the Martinsville Seven, 1949–1951,” Journal of Southern History 58 (1992): 461–90. Another possible factor accounting for Battle’s intransigence may have been fear. His son, John S. Battle, Jr., recalled that his parents were apprehensive that the peaceful protests would turn to rioting and arson (interview with John S. Battle, Jr., Richmond, Va., 22 Sept. 1994).
"I think that is one of the finest examples of the true Southern Negro." He concluded the story by saying that Mayo remained with the Battle family until he died, and "we became very devoted to him."18

Battle even used the Mayo anecdote during his service on the Civil Rights Commission. In June 1959 the commission held a national conference of delegates from its state advisory committees. After welcoming remarks by Eisenhower, each member of the commission addressed the delegates. First, Hesburgh made an eloquent philosophical statement about "the sacred nature of a human person . . . anywhere in the world." Following Hesburgh at the podium, Battle recited the parable about Mayo. Speaking to a national audience, he placed the incident during his own governorship and omitted the characterization of Mayo as an outstanding example of a southern Negro.19 That he would choose the story in such a setting, however, demonstrates both his insensitivity and his adherence to the stereotypical image of the subservient black.

The Battle governorship saw the first serious challenges to racial segregation in Virginia. In 1950 only one of fifteen state parks was open to blacks. The National Association for the Advancement of Colored People filed suit to force the governor to open all state parks to both races. M. E. Diggs, secretary of the Norfolk branch of the NAACP, invited Battle to explain his refusal to desegregate the parks at a mass meeting of blacks in the port city. Declining the invitation, Battle wrote Diggs that he had "no hope, or, may I say, desire, to justify my position before the NAACP." He made clear that he would "make every effort to maintain our park system on a segregated basis, and failing in this, to discontinue the operation of the parks by the State."20 Although he appeared to be a reasonable and likable man, Battle resented pressure, especially from black or leftist organizations.

Battle's reaction foreshadowed Virginia's response to court-ordered desegregation of public schools later in the decade. The governor candidly expressed his views on segregation to General John S. Letcher, who had praised his stand. Writing that he felt so "strongly on the subject of segregation" that he found "it difficult to speak calmly on the subject," Battle assured his correspondent that "you may be sure we propose to do everything in our power to prevent the amalgamation of the races which you so well point out is the final objective of what someone has rather..."
appropriately called the 'National Association for the Agitation of the Colored People.'"²¹

During Battle's term, the five cases that challenged racial segregation in the schools and that became consolidated as *Brown v. Board of Education* reached the United States Supreme Court.²² The governor was hopeful that the Court would not "break down our time-honored custom" of racial segregation. "Any other course would be little short of a catastrophe," he declared. Yet he did not sound very optimistic about the likelihood of maintaining Jim Crow. In June 1951 he conceded that "it is undoubtedly true that the courts may ignore the terrible situation which would result from a decision abolishing segregation."²³

Despite his concern, Battle declined to make any preparations for an adverse ruling by the Court. In late spring 1951 he confided that he "refrained from attempting to say what we would do... as it has seemed to me that the best policy is to take the position that our laws are perfectly valid and we expect the Supreme Court to sustain them." To make any other statement "would indicate doubt of our position, and I am afraid weaken our case before the courts."²⁴ When it appeared that the Court would make its decision in the spring of 1953, Delegate Armistead L. Boothe of Alexandria urged Battle to call a meeting of business, religious, and political leaders to study the possible effects of the forthcoming decisions on race relations in the commonwealth.²⁵ There is no record of any response by Battle to Boothe's plea.

After the Supreme Court announced that a rehearing of the cases would take place in October 1953, Virginia's Republican party, meeting in state convention, asked Battle to appoint a commission to study "problems that may arise" from the suits. Battle dismissed the idea, saying that he doubted a "commission could accomplish anything" while the cases were still before the Court.²⁶

---

²¹ John S. Battle to John S. Letcher, 11 Sept. 1951, Battle Executive Papers, Box 142.
²³ John S. Battle to Shelton H. Short III, 30 Jan. 1952 (first quotation), John S. Battle to A. J. Battle, 9 Feb. 1953 (second quotation), John S. Battle to S. S. Mundy, 7 June 1951 (third quotation), Battle Executive Papers, Box 142. In 1950, the first year of Battle's governorship, the Supreme Court handed down two rulings against segregation in higher education in *McLaurin v. Oklahoma State Regents and Sweatt v. Painter*.
²⁴ John S. Battle to S. S. Mundy, 7 June 1951, Battle Executive Papers, Box 142.
During the summer of 1957, Harry Byrd attacked the civil rights bill, which created the Commission on Civil Rights, as "a punitive measure aimed to humiliate and destroy the South" and as the "heavy heel of federal dictatorship at our throat." As cartoonist Fred O. Seibel indicated in "Not Many Teeth Left," Byrd and his senatorial colleagues James Eastland and Strom Thurmond quashed some of the provisions they found most objectionable.

Cautious by nature, Battle continued to hope that the Supreme Court would uphold racial segregation in the schools. His inaction was also politically expedient. Virginia’s white population overwhelmingly desired a continuation of the racial status quo. In addition, the Byrd political organization to which Battle owed allegiance was strongly opposed to desegregation of the schools. It did not make sense to appoint a commission to plan a course of action that the state did not intend to follow. Ironically, in light of his future appointment by Eisenhower, Battle also opposed Boothe’s bill in the 1950 General Assembly that would have created a Virginia Civil Rights Commission to study race relations in the commonwealth.27

In May 1954, when the Supreme Court handed down its decision in the case of Brown v. Board of Education that declared unconstitutional the continued segregation of public schools, Battle was no longer governor and refrained from public comment. Heeding the advice of Harry Byrd “relative to my personal participation in the controversy,” Battle assured the senator

that "I shall make every effort to stay clear of it." Privately, Battle was deeply troubled by the ruling. He believed that it created "a problem which is probably more serious than anything that has happened in the South since Civil War days." Fearing the consequences of the decision, he hoped that a way might be found "to avoid" its "terrible effects."

Although Battle's racial views represented those of many white southerners, he was not an extremist. Convinced of the rightness of segregation, he had benevolent feelings toward blacks as long as they remained within their allotted sphere. As a lawyer, he was willing to grant blacks limited rights that did not disrupt the racial status quo. Beyond that, however, he was unwilling to go. With these preconceptions he began his service on the Civil Rights Commission.

The commission had three areas of responsibility. First, it was to investigate sworn allegations that citizens were being denied the right to vote. Second, it was to collect and study information "concerning legal developments constituting a denial of equal protection of the laws under the Constitution." Finally, the commission should analyze the laws and policies of the federal government to determine denial of equal protection. The panel was required to submit a final report by 9 September 1959.

When they convened after their swearing in, the commissioners decided to focus their attention on the areas of voting, education, and housing. Because securing the right to vote was a major purpose of the Civil Rights Act of 1957, the commission gave those associated rights first priority. The panel received complaints from Alabama and Mississippi that blacks had been prevented from registering because of their race. It authorized a preliminary investigation that included interviews of the complainants and inspection of the records of county voting registrars.

The board of registrars of Macon County, advised by Alabama's attorney general, John Patterson, that it should not cooperate, refused to show its records to representatives of the commission. Patterson agreed that registration forms and applications were state documents, but he contended that under the Alabama constitution they were not considered public records. The registrars, therefore, had no obligation to disclose them. Thus, the commission encountered the first official resistance to its effort to carry out the will of Congress. In two other counties, the circuit
judge, George C. Wallace, impounded all registration materials. "They are not going to get the records," Wallace snarled. "And if any agent of the Civil Rights Commission comes down to get them, they will be locked up. . . . I repeat, I will jail any Civil Rights Commission agent who attempts to get the records." The commission voted unanimously to hold a hearing on the Alabama complaints in Montgomery on 8 December 1958.

The nationally televised Civil Rights Commission hearing in Montgomery was a noteworthy event in the early years of the Second Reconstruction. The testimony of black witnesses, most of whom were from Macon County, home of Tuskegee Institute, exposed the blatant racial discrimination practiced by election registrars. Of the thirty-three black witnesses who testified that they had been denied voter registration, ten were college graduates. Six held doctoral degrees. Most owned property, and two were decorated war veterans. Describing various forms of chicanery and intimidation, the witnesses expressed their continuing desire to register. Charles Miller, a Korean War veteran, summed up the frustration: "I have dodged bombs and almost gotten killed, and then come back and [been] denied [the right] to vote—I don't like it. I want to vote and I want to take part in this type of government. I have taken part in it when I was in service. I think I should take part in it when I am a civilian."

In response to the testimony of the black witnesses, Alabama election officials were unwilling to cooperate with the commission. The probate judge of Macon County brought his records but said he was unable to supply any information about registration procedures. Attorney General John Patterson interrupted the hearing to state incorrectly that the Civil Rights Commission was part of the legislative branch of the government and, therefore, had no right to summon judicial officers and question them about the affairs of their court. Following Patterson's counsel, five registrars who had been subpoenaed refused to swear an oath before giving evidence.

Impressed by the testimony of the black witnesses, Battle found the intransigence of the Alabama officials irritating. He asked the Macon County registrars to state "why any of those would-be registrants were denied the right to register." Neither official chose to respond. During a break in the testimony, Battle leaned over to his colleague, the president of Notre Dame, and said, "Father Ted, do you think I should speak out strongly on this?" Hesburgh later recalled counseling Battle: "John, your

33 Lawson, Black Ballots, p. 216; Report of the U.S. Commission on Civil Rights, pp. 75–81 (quotation on p. 81).
34 Report of the U.S. Commission on Civil Rights, pp. 81–84; Lawson, Black Ballots, p. 217.
When the Civil Rights Commission began investigating voting rights violations in Alabama, state attorney general John M. Patterson (b. 1921) challenged the commission’s powers to subpoena or question officers of the state judiciary. To Battle’s warning that Alabama appeared to be engaged in a cover-up, Patterson replied, “The time for retreating has come to an end.” Patterson’s hard line on segregation was a key to his election as governor in 1958. In 1961 he welcomed fellow southern governors Ross Barnett (1898–1988) of Mississippi (left) and J. Lindsay Almond, Jr. (1898–1986) of Virginia (center) to the executive mansion for the kickoff of the Civil War centennial celebrations.

speaking out strongly would mean a lot more than my speaking out strongly. You’re a Southerner, a highly respected Southerner, and they all know that.”

After the last witness of the day was heard, Battle made the most important statement of his service as a member of the Civil Rights Commission. He spoke of his Alabama ancestors, especially Cullen Battle,

who had commanded a brigade of Alabama troops in the Civil War. “So,” Battle declared, “I come to the people of Alabama as a friend... returning to the house of my father, and none of you white citizens and officials of Alabama believe more strongly than I do in the segregation of the races as the right and proper way of life in the South.” Despite this background, he nevertheless had to say, “in all friendliness, that I fear the officials of Alabama and certain of its counties have made an error in doing that which appears to be an attempt to cover up their actions in relation to the exercise of the ballot by some people who may be entitled thereto.” He warned the Alabamians that the majority of the members of the next Congress would not be sympathetic to the South and that “punitive legislation” might be passed that would affect Virginia as well as Alabama. Speaking as “one who is tremendously interested in the southern cause,” Battle asked the officials to “reevaluate the situation and see if there is not some way you, in fairness to your convictions, ... may cooperate a little bit more fully with this Commission and not have it said by our enemies in Congress that the people of Alabama were not willing to explain their conduct when requested to do so.”

Battle’s statement at Montgomery evoked a mostly positive response. The Washington Evening Star predicted that “[s]omething is going to fall on Alabama, and this time it will not be the stars.” “No person who can think at all,” the Star declared, could doubt that Battle’s warning of punitive congressional action was accurate. Virginia newspapers praised the former governor’s “sound and friendly advice” to his fellow southerners. In Alabama, press reaction was mixed. The Birmingham News conceded that Battle “raised a sober point.” The Montgomery Advertiser acknowledged the anger white Alabamians felt “over the rash intrusions of the federal government”; nevertheless, the editor agreed with Battle. If the officials had complied with their subpoenas, the Advertiser commented, “no national sensation would have been created and the commission would have gotten the hell out of our town without sound or fury.”

Montgomery’s Alabama Journal, however, found Battle’s statement “a great disappointment to defenders of segregation ... a voice of surren-

Southern resistance to the civil rights bill in 1957, championed by Fred O. Seibel in “The Battering Ram,” continued as the Civil Rights Commission held hearings on voting, education, and housing. Eisenhower condemned the intransigence of Alabama officials because it “show[ed] the American public that . . . they can defy the laws of the land when popular opinion in the particular section or locality may support these people.”

Fred O. Seibel Cartoons (#2531), Special Collections Department, Manuscripts Division, University of Virginia Library

Battle himself wrote, “I had no idea my rather impulsive comment would stir up so much dust. In connection with it, I have been called everything from a ‘turncoat S.O.B.’ to a ‘second Robert E. Lee.’” It is revealing that two weeks after the Montgomery hearing, Battle in his private correspondence seemed to be distancing himself from his remarks.39

At his press conference two days after the hearing, Eisenhower called the conduct of the Alabama officials “reprehensible” because, as he expressed it, “it means . . . showing the American public that . . . they can defy the laws of the land when popular opinion in the particular section or locality may support these people.” Richard L. Lyons of the Washington Post put the matter in context when he described the Montgomery hearing as “the Commission’s first test,” which “it passed on several accounts.” By referring the matter to United States Attorney General William Rogers and thereby pressing for court action against the defiant Alabama officials, “the

38 “Let’s Stick to Legal Route; Patterson’s Advice Is Good,” Montgomery Alabama Journal, 10 Dec. 1958, p. 4-A (clipping), in Civil Rights Commission Files, Hannah Papers.
Commission showed a vigor some skeptics didn’t expect.” More important, Lyons noted, “the Northern and Southern members showed that at least in this basic area of civil rights they can work together.”

The difficulty with Battle, however, was that the Montgomery statement was as far as he would go in protecting blacks’ right to vote. At the commission meeting immediately following the hearing, Battle was the only member to vote against Ernest Wilkins’s motion to refer the Alabama officials’ conduct to Attorney General Rogers for legal action. Declaring that he was opposed to issuing a subpoena for any circuit judge, Battle also voted against a motion to serve George Wallace.

By the time the commission returned to Montgomery for its January 1959 meeting, however, Battle had grown weary of Wallace’s obstructionism. Federal judge Frank M. Johnson, Jr., ordered that the registration records of Macon, Barbour, and Bullock counties be made available to commission agents. Wallace insisted that the investigators specify which of the Barbour and Bullock files they wanted to see and name the complainants. When the investigators complied, Wallace permitted them to see only three applicants’ files.

That evening at the commission’s meeting Battle offered a motion stating that Judge Johnson’s order had not been complied with and asking the attorney general for further action. Battle explained to the commission that he made the motion because he believed the issue was no longer a controversy between the Civil Rights Commission and the circuit judge, but rather a question of compliance with a court order. Upholding the authority of a federal judge rather than protecting the rights of citizens to vote had prompted Battle to act against the recalcitrant Wallace.

Battle played a much less prominent role in two subsequent commission hearings on school desegregation and housing. The Nashville hearing on school desegregation confined its attention to localities that had achieved some limited integration. Battle’s legal assistant on the commission, Howard Rogerson, was a member of the staff’s Education Study Team, which proposed the Nashville conference. Rogerson sought Battle’s ap-

---


Theodore Martin Hesburgh (b. 1917) took holy orders in 1934 and served as president of Notre Dame, 1952–87. He was a member of the Civil Rights Commission from its inception in 1957 through 1972 and chaired the panel during his final three years of service. Lyndon B. Johnson awarded him the Presidential Medal of Freedom in 1964.

The Chicago hearing on segregation in housing revealed the dimensions of racial discrimination in the North, a situation that Battle found ironic. The president of the Chicago Real Estate Board refused to explain why that body had no black members. Battle asked whether the board was a voluntary organization or if it had any governmental sanction or control.

---

Informed that the organization was voluntary, Battle wryly remarked: “I must say, coming from the South as I do, I find this discussion very interesting.”

The additional hearings also gave Battle, the son of a Baptist minister, and Father Hesburgh, president of America’s best known Catholic university, an opportunity to develop a warm friendship. While in Nashville, Hesburgh was surprised one evening when Battle appeared at his room with a bottle of bourbon and asked him to have a drink. Battle remarked, “I never thought the day would come when I would sit down and have a nightcap with a Catholic priest. But I do have one principle. I don’t drink alone.” The evening get-togethers “became a custom” as Battle and Hesburgh discussed such topics as family, religion, and politics, as well as the matters before the commission. The conversations were unquestionably stimulating for Battle as he encountered a mind molded in a different philosophical tradition and one freed of the shackles of segregationist thinking.

Inevitably Battle and Hesburgh discussed the morality of segregation. Hesburgh recalled later that Battle became uncomfortable when the priest brought up philosophical points. “Don’t give me any theological stuff,” Battle would say. “I know what the Bible says, I try to be a Christian, but I’m an old dog.” The Virginian nevertheless assured Hesburgh that he would stand with him on voting rights for blacks. As Battle put it, “I’m a tiger on voting.” When the commission discussed subsequent recommendations on suffrage, however, Battle failed to keep this promise.

Battle’s conversations with Hesburgh could not liberate him from the social and political context of his life in Virginia. When the commission was assembling its staff during the spring of 1958, Battle was outraged by the proposed hiring of journalist Thomas W. Young, son of P. B. Young, Sr., publisher of the Norfolk Journal and Guide, one of the leading black newspapers in Virginia. Although the Journal and Guide was not militant and had praised Battle’s appointment to the Civil Rights Commission, Battle questioned the selection of Young as associate chief of the Division of Reports and Analysis. Within a few days Battle wrote commission staff director Gordon M. Tiffany that he had discovered that the Journal and

---


46 Interview with Theodore M. Hesburgh, C.S.C, Notre Dame, Ind., 11 July 1994 (quotations); Wofford, Of Kennedys and Kings, p. 478.

Commissioner Robert G. Storey called the creation of the state advisory committees “the smartest thing we ever did.” In June 1959, Eisenhower addressed the national conference of delegates from the state advisory committees at the Statler Hilton in Washington, D.C. On this occasion, Battle (seated second from the right with Theodore M. Hesburgh, C.S.C.) insensitively employed his parable about an old black servant in the governor's mansion.

Guide “has taken an active part in the school integration controversy in Norfolk; and that paper's attacks upon State officials of Virginia and others, who opposed integration, have been persistent and violent.” Those officials, of course, were allies of Senator Byrd. Battle declared that Young's appointment would be “most embarrassing to me” and would destroy the commission’s usefulness in Virginia and even in neighboring states. Although Battle acknowledged the legitimacy of Ernest Wilkins’s concern over the commission’s failure to appoint blacks, the former governor was appalled that the panel would employ a “Negro newspaper editor” in an area of Virginia where the racial situation was “exceedingly delicate” without consulting him.48

Battle valued the friendship of Harry F. Byrd, Sr. (1887–1966), whose support had been critical to Battle’s victory in the Democratic gubernatorial primary in 1949. Battle and Byrd flanked J. Lindsay Almond, Jr., and Herman E. Talmadge of Georgia at a formal event in the mid-1950s.

Battle’s reaction to Young’s appointment to the staff, as well as his failure to take a stronger stand on voting rights, must be assessed in light of his relationship with Harry Byrd and the continuing political crisis in Virginia over school desegregation. Although Battle was never one of Byrd’s inner circle of advisers, the two men admired and respected each other. Battle was profoundly grateful to the senator for his intervention in the 1949 primary. As he left the governorship in 1954, he wrote to Byrd, “Of course I know that your staunch support before and during the campaign
was the controlling factor” in the outcome.49 The relationship, however, was not one between equals. Although Byrd addressed Battle in his correspondence as “My dear John,” Battle always used the respectful salutation “Dear Senator.” When Byrd announced his short-lived intention to retire from the Senate in February 1958, Battle took pen in hand and wrote a warm letter to the man he called “my own political mentor.” He confessed to Byrd, “Your good opinion and friendship has meant more to me, than that of any other man and I shall always treasure it as a priceless possession.”50

Battle’s friendship with and allegiance to Byrd had influenced his decisions as governor. Early in Battle’s term, Harry F. Byrd, Jr., offered a bill in the state Senate to provide tax refunds if the budget surplus exceeded a certain percentage of revenues. Governors had been using the surplus to fund badly needed improvements at state institutions. Battle considered the legislation “a bad bill.” One member of the General Assembly recalled that the governor “reportedly referred to the bill as the dumbest piece of legislation he had ever heard.” Battle nevertheless signed the measure into law, an indication of his reluctance to displease the Byrds.51

As Virginia developed its response to the Brown decision, Battle faced a quandary. A legislative study commission chaired by state senator Garland Gray outlined a plan providing for local assignment of students and tuition grants to those who did not wish to attend integrated schools. Battle actively supported the Gray Commission’s recommendations, which required an amendment to the state constitution. The General Assembly authorized a referendum to call a limited constitutional convention to provide for tuition grants. Although Byrd issued a statement endorsing the referendum, privately he did not favor implementing the Gray plan. Instead, he intended to lead “a fight along with representatives of other Southern States” to secure a federal constitutional amendment denying the Court power in school cases. Abandoning the local option feature of the Gray recommendations, Byrd favored a plan that required the governor to close schools under court order to desegregate and to deny state funds to any that chose to reopen on an integrated basis. This strategy was the embodiment of Virginia’s massive resistance to school desegregation.52

Battle’s fealty to Byrd prevented his speaking out in opposition to policies that resulted in the closing of schools in three localities. While the massive resistance bills were being debated at a special session of the

J. Lindsay Almond, Jr. (1898–1986) stumped for Battle in rural Virginia during the hotly contested campaign of 1949. Eight years later, when Almond himself was running for governor as a supporter of massive resistance, Battle returned the favor.

General Assembly in late summer 1956, attorney David J. Mays, the counsel to the Gray Commission, told John S. Battle, Jr., “how badly we need his father and Colgate Darden to tell the people of Virginia the truth about the segregation issue.” Two days later Darden, in Mays’s words, “blasted out in the press ... against the Governor’s [massive resistance] program.”53 John Battle, Sr., however, remained silent. In the fall of 1957 he made a few speeches for gubernatorial candidate J. Lindsay Almond, Jr., a supporter of massive resistance. Reporting Battle’s appointment to the Civil Rights Commission, the Washington Post noted that he “campaigned some” for Almond “but would not subscribe to Sen. Byrd’s ‘massive resistance’ slogan.” Immediately, Battle wrote to Byrd that he was “somewhat disturbed” by the Post’s story. He assured the senator that “I have never at any time, either publicly or in private conversation, expressed the slightest disagreement with the present Virginia policy.” Although Battle

did not express support for massive resistance in his letter, he was most solicitous of Byrd's feelings.\textsuperscript{54}

Battle's service on the Civil Rights Commission coincided with the implementation of massive resistance. Given his relationship with Byrd, it is inconceivable that Battle could have played a more active role on the commission. Blocking the expansion of federal power and defending states' rights were essential parts of Byrd's political canon underlying his opposition to legislation to protect the civil rights of African Americans. Battle embraced his mentor's position. It was both his commitment to Byrd and his belief in racial segregation that influenced Battle's behavior on the commission.

In early 1959, as the commission staff worked on the final report, the members decided to investigate the deprivation of the right to vote in Louisiana. Sixteen hours before the hearing was to begin on 13 July, a federal judge in Shreveport enjoined the commission from holding it. Judge Benjamin Dawkins ruled that the legal rights of the Louisiana officials, who had been charged with violating the voting rights of the complainants, had been denied, because they had not been able to cross-examine their accusers.\textsuperscript{55} The commissioners were staying at Barksdale Air Force Base because segregation ordinances prevented their lodging at local hotels. The heat and humidity, the noise of bombers taking off and landing, and the glare of searchlights scanning the sky made it a restless night. Father Hesburgh had made arrangements for the commissioners to fly to his religious order's rustic retreat at Land O' Lakes, Wisconsin, after the hearing to work on the final report. The tired and sweaty commissioners boarded a DC-3 lent by a Notre Dame benefactor and departed the sweltering air base for the cool, invigorating air of northern Wisconsin.\textsuperscript{56}

The pleasant setting did not affect Battle's views. He told his fellow commissioners that Congress wanted "facts" and that the panel's draft report had gone "very far afield." Battle described the draft as "an eloquent preachment for integration all the way through," and he stated that he "reserved the right to dissent from the final report." On voting rights, Battle proved to be less than the tiger he had promised Hesburgh. He was the only dissenter from the commission's recommendation that the president appoint temporary registrars for federal elections in cases in which nine or


\textsuperscript{55} Dawkins cited the Administrative Procedure Act as the statute that had been breached. He conceded that, if appealed, the order might be set aside, but he declared that it was "all part of the game." The commission suspended the hearing and appealed Dawkins's injunction to the Supreme Court, which overturned the order. The commission resumed the postponed hearing in May 1961. See Dulles, \textit{Civil Rights Commission}, pp. 41, 127.

more individuals swore that they had been denied the right to vote on the basis of race, color, religion, or national origins. Battle believed the commission should “use strong language” in disapproving obstacles to the right to vote and in recognizing that discrimination was occurring. He thought that the recommendation of remedies, however, should be left to Congress. Northern members of the commission took issue with Battle. George M. Johnson, who had succeeded Wilkins, pointed out that failure to make specific recommendations would be “dereliction in the duty of the Commission.”

The northern members of the commission supported two proposals that provoked united opposition from the three southerners. The first was a constitutional amendment on voting that called for universal suffrage subject only to uniformly applied age and residence requirements. There was no mention of literacy. Battle viewed the proposed amendment as “another example of whittling away the power of the States.” The founding fathers, he maintained, considered the question of voter qualifications very carefully and decided that “the States were the proper authority to determine this matter.” The commissioners also divided regionally on a proposal denying federal grants to institutions of higher learning, both public and private, that discriminated on the basis of race in their admissions policies. The university presidents, Hesburgh and Hannah, supported this position. Battle, however, declared that the purpose of such grants—for example, cancer research—was “beneficial to the country as a whole.” The commissioners agreed that because there was a tie vote on both proposals, they would be included in the report along with dissenting statements.

In spite of their disagreements, the commissioners left Land O’ Lakes in a cordial mood. They endorsed unanimously thirteen formal recommendations in the fields of voting, education, and housing. Among the thirteen was a proposal that Congress declare all state registration and voting records to be public documents that must be preserved for five years. This

57 Minutes of Official Proceedings of the Commission on Civil Rights, 23d meeting, 14–15 July 1959 (quotations); Dulles, Civil Rights Commission, pp. 64–65. George M. Johnson, former dean of the Howard University Law School, had been appointed in place of Wilkins, who had resigned because of ill health and died five months later, in mid-January 1959. The northerners were quite correct in their understanding of the law. Section 104 of the Civil Rights Act required the commission to prepare a final report “of its activities, findings and recommendations” (Public Law 85–315, 85th Cong., 1st sess. [9 Sept. 1957]).

58 Minutes of Official Proceedings of the Commission on Civil Rights, 23d meeting, 14–15 July 1959. The commission dealt with dissents in an unusual way. Instead of containing a minority report, the final report presented dissents as footnotes, or if lengthy, in separate statements. In either case, the dissent appeared in the body of the report. The effect was to minimize the impression of division on the commission. In the event the commissioners divided three to three, the matter under consideration was included in the report as a “proposal,” rather than a “recommendation.” The distinction between a proposal and a recommendation caused much confusion. Having reserved the right to dissent from the final report, Battle had not objected to the procedure. The minutes of the commission meeting of 14–15 July 1959 do not reveal who suggested this way of dealing with dissents; it was, however, a masterful strategy from the standpoint of the northern members.
recommendation was a result of the commission’s difficulties in Alabama and Louisiana. Robert Storey, the vice-chair, stated that it was “remarkable” how often the commissioners agreed. There is evidence, however, that at least some of the southerners may have had some second thoughts after a night’s sleep. Hesburgh later recalled that the next morning, as he was vesting for mass in the chapel, he overheard the southern commissioners talking as they were having breakfast in the adjoining dining room. One asked, “What really happened to us last night?” According to Hesburgh, Battle replied that they had an open discussion, they had given their word, “and we’re gentlemen. We’re going to keep our word.”

After the meeting in Land O’ Lakes, Battle’s major concern was how he would express his dissent to the recommendation on federal voting registrars and to the statements on the proposed constitutional amendment and federal grants to institutions of higher learning. After consulting with the other southern commissioners in Washington, D.C., in early August, he joined them in declarations opposing the universal suffrage amendment and rejecting conditional federal grants to colleges and universities. Because he was the only dissenter to the commission’s recommendation on voting registrars, Battle prepared his own statement on that subject. Although agreeing that all “properly qualified” citizens should have the right to vote, he declared current laws sufficient to protect that right. In spite of his earlier criticism of Alabama officials, he could not bring himself to endorse the appointment of federal registrars.

Battle also decided to make a formal dissent from the entire report, a move enabling him to put some distance between himself and its findings. Stating his strong disagreement “with the nature and tenor of the report,” he complained that “it is not an impartial factual statement, such as I believe to have been the intent of Congress, but rather, in large part, an argument in advocacy of preconceived ideas in the field of race relations.” Although he had agreed with all the formal recommendations except the one on voting registrars, Battle appeared to be rejecting the entire

59 Other recommendations included establishment by the commission of “an advisory and conciliation service to assist local officials” and to mediate disputes in matters relating to education and also withdrawal by the Federal Housing Administration and the Veterans Administration of federal mortgage guarantees from builders practicing discrimination in states and cities having laws against such practices (With Liberty and Justice for All: An Abridgment of the Report of the United States Commission on Civil Rights, 1959 [Washington, D.C., n.d.], p. 133).


By the time Eisenhower posed with the Civil Rights Commission at the national convention of representatives of the state advisory committees in June 1959, one of the original commissioners had resigned because of ill health and subsequently died. J. Ernest Wilkins’s replacement on the panel was George M. Johnson (b. 1900), a former dean of Howard University’s School of Law and a member of the NAACP’s advisory staff, 1945–60. In his address to the convention, the president praised the commission for raising the nation’s social conscience. The panel, he declared, “holds up before us a mirror so that we may see ourselves, what we are doing and what we are not doing, and therefore makes it easier for us to correct our omissions.”

document. Learning that Battle would make such a statement, Chairman John Hannah wrote sadly to Hesburgh, “This disappoints me, but I guess we accept it as a fact of life.”

When the report was made public, a headline in the Richmond News Leader proclaimed, “Battle Fights Civil Rights Unit’s Report.” The former governor wrote to a friend in Richmond, “I imagine you have seen from the papers that I disagreed with practically everything the Civil Rights Com-

---

mission recommended in its Report.” In fact he had not, and Eisenhower remarked that he was surprised that such a commission that represented different regions and parties could achieve such a high degree of unanimity.63

Although Congress had renewed the commission in September 1959, Battle resigned in October. Eisenhower, citing Battle’s “great contribution” to the deliberations, tried to persuade him to stay on, but the Virginian replied that, having served for the two-year period of the original commission’s life, he wanted to return to his law practice. With friends in Virginia he was more candid. He believed that extension of the commission’s existence “will mean the same setup of staff and so forth which, from our point of view, is absolutely impossible.” Although the members of the commission were “most considerate” and “courteous,” Battle found that service had at times been “unpleasant,” and he had “felt definitely out of place in that company.”64

The discrepancy between Battle’s votes on the recommendations in the final report and his private comments suggests the complexity of his position on the Civil Rights Commission. As a committed segregationist and a devoted disciple of Harry Byrd, Battle did not want to become associated with the report in the public mind. Although he agreed with specific points in the report, Battle undoubtedly found the totality of the document disturbing because it contained implications that threatened the status quo in the South’s racial caste system.

When Congress reconvened in January 1960, it considered bills containing the commission’s recommendation for federal voting registrars. At the request of Senator Byrd and his Virginia colleague, A. Willis Robertson, Battle agreed to testify against these measures before the Senate Committee on Rules and Administration. He reaffirmed his opposition to the federal registrars on constitutional and other grounds. He also criticized substitute legislation proposed by Attorney General William Rogers. This bill, which ultimately became part of the Civil Rights Act of 1960, included a provision whereby a federal judge could appoint referees to assist blacks to register and vote in areas where a pattern of disfranchisement existed. Summoning up memories of the prostrate South, Battle denounced Rogers’s proposal as resurrecting “the spectre of reconstruction which those of


64 Dulles, Civil Rights Commission, p. 85; “‘Great Contribution,’ Battle Resigns Post on Civil Rights Group,” Richmond Times-Dispatch, 13 Oct. 1959, p. 1 (first quotation); “Battle Resigns Post With Rights Group,” Richmond News Leader, 13 Oct. 1959, p. 13; John S. Battle to Collins Denny, Jr., 10 Sept. 1959 (second and fifth quotations), John S. Battle to Douglas A. Robertson, 15 Sept. 1959 (third, fourth, and sixth quotations), Battle Papers. Battle was also concerned about his law practice in Charlottesville. His older son and law partner, John S. Battle, Jr., had accepted an offer to join a large firm in Richmond, and his senior partner was ill. See John S. Battle to Doyle E. Carlton, 1 Oct. 1959, Battle Papers.
us who live in the Southern portion of our re-united country had hoped and believed had been forever buried."65

When the Norfolk Ledger-Dispatch predicted that Battle would be "A Strong Southern Voice" on the Civil Rights Commission, the editor overlooked the fact that not all southerners were white segregationists.66 Although Battle was neither a demagogue nor a mean-spirited reactionary, he failed to make a substantial contribution to the commission. His opposition to the key voting rights recommendation and his general dissent from the final report neutralized his early stance at the Montgomery hearing. Bound by his segregationist beliefs and his loyalty to Harry Byrd, Battle could not overcome his social and political heritage. As the Richmond Afro-American stated, "[D]iehard segregationists can hardly make a worthwhile contribution in the field of race relations."67 Battle's resignation from the commission in the fall of 1959 was timely because his commitment to segregation made him an obstructionist. Had he chosen to remain, he faced the likelihood of more lonely dissents and increasing isolation from the commission's majority.

Battle's resignation was also a turning point for the commission. There would be no more segregationist appointees. Battle's successor, Robert S. Rankin, a political scientist from Duke University, was a moderate whose appointment, in the words of historian Foster Rhea Dulles, "accentuated the shift of the Commission as a whole to an increasing commitment to the civil rights cause."68 Subsequent appointments by Eisenhower's successor, John F. Kennedy, confirmed this trend. Southern senators denounced Rankin and Kennedy appointee Spottswood W. Robinson III, dean of the Howard University Law School, as unrepresentative of the South. The southern lawmakers correctly perceived that Eisenhower's attempt to create a carefully balanced commission was no longer a priority. Concern with equality had become paramount among the commissioners. There was no longer anyone on the panel speaking for the traditional southern way of life.69 The new commissioners, however, were more representative of the entire South and of the region's future than was John Battle, who was devoted to the Jim Crow South of his formative years. At the height of the nonviolent civil rights movement in the 1960s, there was no longer room for a segregationist on the Civil Rights Commission.

68 Dulles, Civil Rights Commission, p. 85. Earlier, Rankin had served on the commission staff as a special adviser.