

## REPAIRING HER FAULTS

Three weeks ago, in the trial advocacy class I teach at the University of Virginia law school, I asked a question. "Who is Edward Everett?" (Slide #1) I ask this question every year. Only one student in, after some hints, has been able to identify him. Edward Everett was a famous man in his time. He was the 11<sup>th</sup> President of Harvard. He served in the House of Representatives and the U.S. Senate. He was the Governor of Massachusetts. He also served as the United States Secretary of State. He was the featured speaker on a significant day in American history. The day was selected so he could be there to speak, November 19, 1863. He wrote the other speaker on that day, "I wish that I could flatter myself that I came as near to the central idea of the occasion in two hours as you did in two minutes." All my students have heard of the other speaker on that day and his speech: Abraham Lincoln and the Gettysburg Address.

I ask this question and tell this story to the students to make the point that the length of a speech does not make it more persuasive. The most frequent complaint of jurors is that a lawyer spoke way too long and said the same thing over and over. Good lawyers know when to sit down.

It is no surprise that Abraham Lincoln was an experienced trial lawyer. He tried a lot of jury trials. He knew how to grab the attention of the audience. He knew how to be direct. He chose powerful words and knew how to be persuasive.

One thing Lincoln was wrong about was when he said in his address "The world will little note, nor long remember what we say here..."

**I find myself reading it each year.**

**“Fourscore and seven years ago our fathers brought forth, on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived, and so dedicated, can long endure.”**

**He knew there was no guarantee that this experiment called Democracy would work.**

**He also knew that other Nations would be watching this country to see if democracy worked.**

**He went on to say:**

**“It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us -- that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion -- that we here highly resolve that these dead shall not have died in vain -- that this nation, under God, shall have a new birth of freedom -- and that government of the people, by the people, for the people, shall not perish from the earth.”**

**It is for the living to preserve democracy. I thought of Lincoln’s words as I have worked on this paper.**

**I have used my SPHEX papers to go on journeys about topics I want to learn. I started working on this topic after hearing Kim Payne’s fine paper entitled “A Notable Centennial” on September 10, 2020. He discussed the changes in city government from the Virginia Constitutions. I realized that I did not know much about the different Virginia Constitutions or their histories. I began reading about it. I did not know that a relevant anniversary was coming up at that time. More on that later. I have two quotes before I discuss the Virginia constitutions.**

One is from Professor A.E. Dick Howard of the University of Virginia law school. (Slide #2)

No document of American constitutionalism, save the Federal constitution itself, draws so deeply on the great themes of American constitutional and legal developments as does the Virginia Constitution. Its origins were contemporaneous with the events leading to independence; some of the greatest minds of the founder's generation made contributions to it, and its development over the ensuing two centuries have been shaped by the conflicts and movements central to the history of the American nation.

A second quote is from Alexis de Tocqueville, the Frenchman who knew Democracy. I found it in a forward written by Justice Ruth Bader Ginsburg to a book about Colonists and Constitutions. (Slide #3)

... the greatness of America lies not in being more enlightened than ... other Nations, but in her ability to repair her faults.

The title of the paper comes from this quote – Repairing Her Faults. Part of the story of the Virginia constitution is Virginia addressing and correcting her faults.

How many Virginia Constitutions have there been? Depending on how you count, there are six. 1776, 1830, 1850, 1869, 1902, 1971. I read all these constitutions for this paper. Before working on this paper, I had never studied the history of the Virginia Constitution or read it in its entirety. I also, visited the Virginia State Capital this summer. At the Capital, there are pictures of the delegates at the different conventions. Here is a picture of the 1830 convention. (Slide #4)

It was a gathering of giants. James Monroe was the President of the convention. Present were former President James Madison and future President John Tyler, sitting Chief

Justice John Marshall, 7 U.S. Senators, 15 Representatives, and 4 Governors. Also, present were delegates of the Virginia General Assembly and sitting Judges of Virginia.

Here is a picture of the convention that resulted in the 1869 constitution. (Slide #5)

Congress required southern states that seceded to adopt a new constitution to regain statehood. Twenty-four of the elected delegates were African Americans. The constitution was ratified by popular vote in 1869 and Ulysses Grant restored Virginia's right to representation in Congress and the United States military occupation in Virginia ended in 1870.

In this paper, I will tell the story of two of the other Virginia constitutions.

The first story starts in the beginning, May of 1776. The battles of Lexington and Concord occurred the year before in 1775. Fighting had started in Virginia. The British Royal Navy had destroyed Norfolk, the Norfolk courthouse was in flames. The Royal Governor, Lord Dunmore, dissolved the House of Burgesses. He fled Williamsburg and was on a British ship in the Chesapeake Bay. The Continental Congress, meeting in Philadelphia, passed a resolution asking each colony to form a new government.

A reluctant fifty-year old man traveled to Williamsburg to serve as a delegate. When previously asked to be a delegate to the Continental Congress he gave a passionate reply, declining due to his poor health and brood of motherless children. His wife died in 1773, after giving birth to twins, their ninth and tenth children. He arrived in Williamsburg two weeks late, because of gout, a lifelong condition.

The delegates passed a resolution to draft a declaration of independence and a declaration of rights before forming a new government. The late arriver was assigned to the committee to draft these declarations. He quickly became frustrated with the thirty-member

committee, lamenting that there will be a thousand ridiculous and impractical proposals. Have you ever been on a committee like that? So, what do you do? He spent nine days in Raleigh Tavern drafting the declarations. They would become part of the Virginia Constitution. He is considered the principal architect of the Virginia Declaration of Rights and the Virginia Constitution. The biography I read about this reluctant participant is entitled The Forgotten Founder. Thomas Jefferson had the Virginia Declaration of Rightsrafted by this forgotten founder by his side when he drafted the Declaration of Independence later that same year. Benjamin Franklin used it in drafting the Pennsylvania constitution. John Adams used it in drafting Massachusetts' constitution.

The exact language has been copied in several state constitutions and the French Bill of Rights. James Madison used it to draft the United States Bill of Rights, fifteen years later. Who is this man? Raise your hand if you know. This is his picture at the Virginia Museum of History and Culture. (Slide #6) This is his bust at the State Capital. (Slide #7) This summer, I visited his home in Gunston Hall. It is seven miles down the Potomac River from Mount Vernon. (Slide #7&8)

Here is a quote from a letter from Thomas Jefferson at the visitor center at Gunston Hall. (Slide #9)

The fact is unquestionable, that the Bill of Rights and the Constitution of Virginia were drawn originally by George Mason, one of our really great men, and of the first order of greatness.

Thomas Jefferson to Judge Woodward, March 25, 1825

His biographer, Jeff Broadwater, calls it a constant sense of wonder how this man with little formal education and no legal training was able to draft the declaration. He notes that

Mason had access to one of the largest libraries in Virginia owned by his uncle, John Mercer, a lawyer. There were many writings of the time concerning the rights of men. George Mason was able to bring together these ideas into a new consensus.

Here is a picture of the statue of George Mason in Wilkins Plaza at George Mason University. (Slide #10) I visited it the same day I went to Gunston Hall. In his left hand he offers out the declaration of rights. He holds his right hand over three books, symbolizing some of the sources he used. (Slide #11) The books are by Locke, Rousseau, and Hume. In front of him is a French quote from Rousseau's social contract. (Slide #12) The translation is "All men are born equal and everywhere he is in chains."

On one side of the pedestal is the quote from the Declaration of Rights, "All men are born equally free and independent, and have certain inherent natural rights... among which are the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety. George Mason, May 1776".

On the other side is a quote from Mason's will, "I give and bequeath unto each of my four Daughters, Ann Mason, Sarah Mason, Mary Mason, and Elizabeth Mason, and to each of their heirs for ever, . . . the following slaves with their increase respectively for the date of this my will... I confirm .... A Negro Girl named Penny to my daughter Ann."

This quote recognizes the contradiction, that what Lincoln called the proposition - all men are created equal - was not fulfilled in Mason's own life. All men were not equal. Wilkins' Plaza at George Mason University is named after a Mason professor, Roger Wilkins, who served as assistant attorney general under Lyndon Johnson, and was a civil rights leader. Further down the Plaza are separate memorials dedicated to the enslaved people of George Mason.

**What is in the Declaration of Rights? Here is a copy of the rights, I have them for you, straight from Gunstan Hall. It might be good for you to always keep one with you. If you are stopped by a law enforcement officer, this may come in handy. I can tell you, if you appear before me in Circuit Court and read from it, I will be impressed. I can not promise your sentence will be any lighter.**

**What rights are included in the Declaration of Rights? Most of the rights in the U.S. Bill of Rights.**

**See Section 8. Rights for those charged with crimes - to be confronted by your accuser, to call out evidence in your favor, to have a speedy trial by an impartial jury of his vicinage, and a unanimous verdict. Also, you can not be compelled to give evidence against yourself.**

**Section 10 addresses unreasonable searches and seizures.**

**Section 11 states a trial by jury is a sacred right and is preferable to all other trials. Periodically, I have sent special invitations to Campbell County residents who do not show up for jury duty. It is an invitation that you do not get to R.S.V.P. I read this section of the Declaration of Rights to them to show the importance of jury trials.**

**Section 12 is freedom of the press is one of the greatest bulwarks of liberty.**

**Most of the rights had a long history in English law starting from the Magna Carta through the English Bill of Rights of 1689.**

**Article 16 provides that every person is entitled to the free exercise of religion, and it is not to be by force or conviction.**

**What was not in the Magna Carta or the English Bill of Rights?**

**Section 1, that all men are equally free and independent.**

**Section 2, that all power is vested in and consequently derived from the people.**

**Section 3, that government ought to be instituted for the common benefit, protect and security of the people, nation, or community.**

**Section 16, that no free government, or the blessings of liberty can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles.**

**Frequently, I give oaths of office to public servants in Campbell County. The oath is to swear or affirm that you will support the Commonwealth, the Constitution of the United States, and the Constitution of Virginia. Wouldn't it be great if they certified that they would serve for the public benefit?**

**The word community appears six times in the Declaration of Rights. A continual issue in the history of Virginia is who is a member of the community. Section 1 provides that men had inherent rights. The phrase "when they enter a state of society" was added in Section 1 to exclude enslaved men from having rights. Only those who had a permanent common interest in the community could vote. (Section 6) In 1776, this meant owning land. It was not until 1850 that an interest in land was no longer required. Today, Virginia has one of the most restrictive rules as to voting by convicted felons. Most states allow the restoration of rights when the felon either serves his time or completes his probation. In Virginia, it is left to the Governor to restore on an individual basis.**

**Here is wonderful painting, entitled "Adoption of the Virginia Declaration of Rights" by John Clifton that resides outside the Senate chamber of the State Capitol. (Slide #13) Patrick Henry is standing and speaking. He strongly supported Mason's ideas and was the first**

**governor of Virginia. He has his spectacles on top of his head which he would often do when he was giving a long speech. Sitting in the speaker's chair is Edward Pendleton from Caroline County. A replica of the speaker's chair is in the Capitol. You will also note the mace. One is currently used in the House of Delegates. Every day the House is in session the sergeant at arms places the mace in the House Chamber. George Mason is sitting to the right of Speaker Pendleton as you look at the picture.**

**What is the legacy of George Mason? Here is a quote from Harry Truman, who says it very well (Slide#14):**

**Too few Americans realize the vast debt we owe [George Mason]. His immortal Declaration of Rights in 1776 was one of the finest and loftiest creations ever struck from the mind of man. George Mason it was who first gave concrete expression to those inalienable human rights that belong to every American citizen and that are today the bedrock of our democracy. Our matchless Bill of Rights came directly from the amazing wisdom and far- seeing vision of this patriot. Those first ten amendments to our Constitution, which we call our Bill of Rights, were based on George Mason's great Declaration of Rights. That is why I say that George Mason will forever hold a special place in our hearts. I sincerely hope that his home, Gunston Hall, will in time become a symbol of the rights of man and a mecca for all liberty-loving Americans.  
-President Harry Truman to Edward Boykin, October 5, 1949**

**Since working on this paper, I have seen many references to Bill of Rights. I have seen a patient's bill of rights, a student's bill of rights, an athlete's bill of rights. Well, the first one in America, was in Virginia with George Mason's Declaration of Rights.**

**The second story about the Virginia Constitution starts in 1968. However, to tell the story we must go back to 1898. In that year, the U.S. Supreme Court decided the case of**

**Williams v. Mississippi**. In a 9–0 decision, the Court held that Mississippi’s constitution that included the poll tax, literacy tests and grandfather clause, did not violate the 14<sup>th</sup> Amendment. The Court found that the requirements did not discriminate towards African Americans and there was no judicial remedy. Sometimes the U.S. Supreme Court gets it wrong.

In 1902, delegates from Virginia gathered to rewrite the Virginia Constitution. The president of the convention was John Goode of Bedford. The delegate from Lynchburg was Carter Glass. Every Thursday, I pass this historical marker on Church Street after attending the Lynchburg morning Rotary Club. (Slide #15) It notes that Carter Glass was a newspaper publisher who served in Congress both in the House and the Senate for a total of 44 years and was author of the Federal Reserve Act. In my research about Carter Glass, I found this newspaper article entitled “Carter Glass's influence for good and bad was enduring”. (Slide #16) It was written by our own Joe Stinnett in 2017. His role in the 1902 constitution was part of the bad influence. From the convention records, Carter Glass addressed the President – John Goode.

**Mr. Glass: Mr. President, in the midst of differing contentions and suggested perplexities, there stands out the uncontroverted fact that the article of suffrage which the Convention will today adopt does not necessarily deprive a single white man of the ballot but will inevitably cut from the existing electorate four-fifths of the negro voters.**

**(Applause.) That was the purpose of this Convention; that will be the achievement.**

**[Delegate]: Will it not be done by fraud and discrimination?**

**Mr. Glass: By fraud, no; by discrimination, yes. But it will be discrimination within the letter of the law, and not in violation of the law. Discrimination! Why, that is precisely what we propose; that, exactly, is what this Convention was elected for—to discriminate to the very**

**extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate. As has been said, we have accomplished our purpose strictly within the limitations of the Federal Constitution by legislating against the characteristics of the black race, and not against the "race, color, or previous condition" of the people themselves. It is a fine discrimination, indeed, that we have practiced in the fabrication of this plan; and now, Mr. President, we ask the Convention to confirm our work and emancipate Virginia.**

**They were successful in disenfranchising African Americans. In the 1904 presidential election, there were slightly more than half of the votes cast than in 1900. Although there were 147,000 African Americans in Virginia at the time of the 1902 Convention, only 21,000 remained on the voter list. By October of that year, Richmond went from 6,427 African American voters in 1900 to 760 in 1902. Small towns experienced the same decline. In Culpeper, the African American registrants went from 1,075 to 153. In 1912, Virginia allowed parties to hold primary elections limited to white voters. The Democratic party quickly excluded African Americans. This allowed the Byrd Organization to dominate Virginia politics. Harry Byrd, Sr. was governor of Virginia from 1926 to 1930 and Senator from 1933 to 1965. The Byrd Organization controlled Virginia's politics from the statewide offices to the constitutional offices in each locality, the Sheriff, the Clerk, and the Judge. The Organization was extremely successful in building its power on a highly restricted franchise. Indeed, in the 1940's in the height of Byrd's power, fewer than 12 percent of adults participated in elections. A large part of this was from the poll tax, the literacy test, and the grandfather clauses of the 1902 Constitution. The Byrd Organization also gerrymandered districts with uneven populations to cement its power. The Byrd Organization was known for fiscally conservative policy. One**

historian bluntly said, “they didn’t steal money, but they stole democracy”. Political Scientist V.O. Key quipped that “by contrast, Mississippi is a hot bed of democracy”.

Now we return to 1968. It was the year of the assassination of Martin Luther King, Jr. and Robert Kennedy. The country was in turmoil over Vietnam. There were riots and protests. Forty-one people died in a riot in Richmond. There were protests at the Democratic convention in Chicago. Virginia had been a leader through the 1960s in mass resistance against the integration of schools. There have been times when we have been more divided than we seem today.

Governor Mills Godwin, who had been part of the Byrd Organization, called for a Commission on Constitutional Revision. (Slide #17) It did not seem like a good time to revise the constitution. Maryland, the year before, had failed to adopt a new constitution. The people of Maryland voted by a 60 to 40 percent margin to reject a constitution approved at a convention. New York, New Mexico, Oregon, Arkansas, and Idaho had recently failed to make changes to their constitutions.

Thomas Jefferson had frequently said that a constitution should be revised at regular intervals “so that it may be held on with periodic repairs from generation to generation.” He studied European mortality tables and determined that 50% of the population changed every 19-20 years and the constitution should be revised every 19-20 years. He proclaimed that “the Earth belongs to the living”.

The 1902 constitution no longer met Federal law. In 1964, the Supreme Court reapportionment decisions required one person, one vote. No longer could districts have significant variation in population. The Court struck down Virginia’s poll tax. The 1965 Voting

Rights Act applied to Virginia and restricted the use of literacy tests. The Byrd Organization's pay as you go fiscal policy did not meet the goals of Virginia. Virginia had a very limited ability to borrow money through bonds. (Slide #18)

The men appointed to the Commission were all distinguished. (Slide #19) All men. Including: Lewis Powell, former president of the American Bar Association and future U.S. Supreme Court Justice; Hardy Dillard, University of Virginia Law Dean and eventually member of the World Court at The Hague; Oliver Hill, preeminent civil rights lawyer who argued Brown v. Board of Education with Thurgood Marshall; Colgate Darden, former Governor of Virginia and third President of the University of Virginia; Davis Paschall, former superintendent of public institutions and President of William and Mary; Albertis Harrison, former governor of Virginia and Virginia Supreme Court Justice; Ted Dalton, two time republican candidate for governor and a Federal Judge; George Cochran, former Virginia Senator and Virginia Supreme Court Justice; Alexander Harman, Circuit Court Judge from Pulaski; J. Sloan Kuykendall, a Winchester attorney and former President of the Virginia State Bar; and Albert Bryan, Jr. judge of the Alexandria Circuit Court and a future Federal Judge.

The Chairman of the Commission, Albertis Harrison, appointed 35-year-old law professor A. E. Dick Howard executive director. The son of a Richmond pharmacist and a graduate of Thomas Jefferson High School, Professor Howard was first in his class at the University of Richmond and first in his class at the University of Virginia Law School. He spent two years as a Rhodes Scholar at Oxford. He served as a clerk for Justice Hugo Black on the U.S. Supreme Court. He was the clerk that assisted Justice Black in the writing of the Court's decision in Gideon v Wainwright. The case requires each state provide counsel for indigent

defendants that may be incarcerated. I read a book in high school called *Gideon's Trumpet* about the Gideon v. Wainwright case.

The Commission had a tall task. Although it was called a revision commission it was really rewriting the Constitution.

To revise the constitution, two separate General Assemblies, after a House election, had to pass the constitution. It would then go to the people as a referendum. This is called a procedure of an amendment in the form of a substitute. The Commission worked with thorough and deliberate means and after five public hearings submitted a 542-page report to the General Assembly in January of 1969, about 9 months after it was commissioned. (Slide #19) Professor Howard was named counsel for the General Assembly. He met with various committees of the Senate and House. The General Assembly passed it in April of 1969 and then in the regular session in 1970. In November of 1970 the vote went to the people of Virginia. Linwood Holton, the new Republican Governor, asked Howard to chair the campaign committee for the new constitution. (Slide #20) With a \$100,000 budget from private contributions, the committee was called "Virginians for the New Constitution". He spoke across Virginia and set up local committees to support the new constitution. Howard conducted an enormous educational campaign to combat the "general inertia, apathy and indifference one has to overcome in a referendum of this sort". He noted that Maryland was confident in the passage of a new constitution, and it had a poor educational campaign and lost. He sought resolutions from organizations across Virginia and communicated with editors of Virginia newspapers. He sought the endorsements of leaders across the state. The slogan for the campaign was "Bringing Government Closer to the People".

Here is a cartoon from the opposition. (Slide #21) It is entitled "Concerned Citizens Don't Let It Happen. Stop, Look, Go, Vote No November". It has a mousetrap with a voter depicted as a mouse who says, "just for me?" He stands next to a mousetrap with the bait of a revised charter. Lost local control regional government and unbridled spending are listed as the results of the new charter. It has a picture of A. E. Dick Howard, and it says, "wonder if he will take the bait this time" and a quote from former Governor Godwin "some of the proposals are so complex the people must accept them on faith". This cartoon was used in hand bills and passed out before the referendum. According to Professor Howard, there were conspiracy theorists who said "surely Virginians would not have written this constitution. It must have been written somewhere else. Maybe it was written in Moscow or Beijing or worse yet maybe in New York or Chicago. It is a foreign project". Other opponents argued that they were going to use this constitution to raise our taxes. Barrye Wall, the Farmville newspaper editor, opposed the constitution because he argued that it would consolidate school districts and enforce school busing. There was a provision in the constitution that empowered the General Assembly and Board of Education to take small districts and combine them, so the opponents of the constitution argued "Ah Ha this is the Camel's nose under the tent. Our children are going to be bussed". It was a hot issue.

So, what do you think the vote was on November 3, 1970? (Slide # 22) 576,776 to 226,219, (71.8% to 28.2%). Wow. The Lynchburg vote was 7,297 to 2,861 which is the same percentage as the statewide vote.

A lot was accomplished. There is no way for me to go over everything. Here are some of the key accomplishments.

Included in the Declaration of Rights was a free from discrimination clause, (Slide #23) “The right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex or national origin, shall not be abridged”. This was a specific repudiation of the 1902 Constitution. In the Commission’s draft the word sex was not included in the anti-discrimination clause and a delegate from Alexandria, Dorothy McDiarmid requested that they add sex. (Slide #24) It was added without any controversy. Virginia had its own little equal rights amendment in the Constitution.

The new constitution also mandated that the state and localities provide for public education. A locality could no longer close its schools like Prince Edward County. Education was added to the Declaration of Rights: (Slide #25) “That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and the Commonwealth should avail itself to those talents which nature has sown so liberally among its peoples by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth.” This addition was unsurpassed at a time in any state’s constitution.

The new constitution provided for revenue, bonds, and general obligation bonds that significantly increased Virginia’s ability to meet its growing capital needs. The constitution also included a section on conservation: (Slide #26) It shall be the policy of the Commonwealth to conserve, develop and utilize its natural resources, its public lands and its historical sites and buildings. Further, it shall be the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit and enjoyment and general welfare of the people of the Commonwealth.

The constitution was made more coherent with simple language and brevity of expression. Things that no longer applied were deleted from the constitution. For instance, the 1902 Constitution had a provision that a person who fought in a duel or accepted a challenge to duel could not vote. I doubt there had been many duelers in the 1960s. There were a lot of clauses that did not belong in a constitution, and they were eliminated. The constitution went from over 30,000 words to 18,400 words.

I have reviewed Professor Howard's files that are in the special collection section at the University of Virginia Law School. The work he did on the campaign is remarkable. He devoted three years of his life to the mission to have a new constitution. He took nothing for granted and left no stone unturned. His contributions were significant in the constitution passing with 71.8% of the vote.

Almost 40 years ago my grandmother gave me the book *Miracle at Philadelphia, the story of the constitutional convention May to September 1787*. Isn't it something when someone you respect a lot gives you a good book, you remember it? In today's time when we can't seem to get most people to agree that today is Thursday or ice cream tastes good, the 1971 constitution seems like a miracle. Last year its fiftieth anniversary was celebrated. There were exhibits at the Library of Virginia and a traveling exhibit came to the Lynchburg Library.

Professor A. E. Dick Howard is now 89 years old. (Slide #27) He has assisted other countries in revising their constitutions including Brazil, Hong Kong, the Philippines, Hungary, Czech Republic, Poland, Romania and South Africa. The *Richmond Times Dispatch* and the Library of Virginia include Professor Howard in their lists of the greatest Virginian of the

Twentieth Century. In 2013, the University of Virginia recognized Professor Howard with its Thomas Jefferson award – the highest honor given to a faculty member at the University.

The last two falls Professor Howard has taught a seminar the same night as I teach. There are not many people at the law school on Tuesday nights. He teaches at night due to COVID. During breaks I have been able to talk with Professor Howard and I told him I was working on this paper. A few weeks ago, I ran into him and I asked “How did you get 71.8% to vote for this constitution? Was this like the miracle in Philadelphia?”. He replied that he never expected that there would be a vote of 71.8% in favor. He lived it. He was not going to call it a miracle. However, he summed it up by saying “John, there were more people that cared about the common benefit back then.”

I reflected on that. More people cared about the common benefit back then. Right out of the declaration of rights. The question I ponder is how, do we have more of our public servants and citizens care about the common benefit? How do we return to George Mason’s fundamental principles so that we can repair our faults and so the government of the people, for the people, by the people can long endure? I do believe that one answer is to tell our story more, particularly the positive stories.


A good lawyer knows when to sit down.




# REPAIRING HER FAULTS



WHO IS EDWARD  
EVERETT?

- 
- ▶ No document of American constitutionalism, save the Federal constitution itself, draws so deeply on the great themes of American constitutional and legal developments as does the Virginia Constitution. Its origins were contemporaneous with the events leading to the independence; some of the greatest minds of the founder's generation made contributions to it, and its development over the ensuing two centuries have been shaped by the conflicts and movements central to the history of the American nation.
  - ▶ Professor A. E Dick Howard, University of Virginia School of Law



▶ ...the greatness of American lies not in being more enlightened than other Nations, but in her ability to repair her faults.

▶ Alexis de Tocqueville



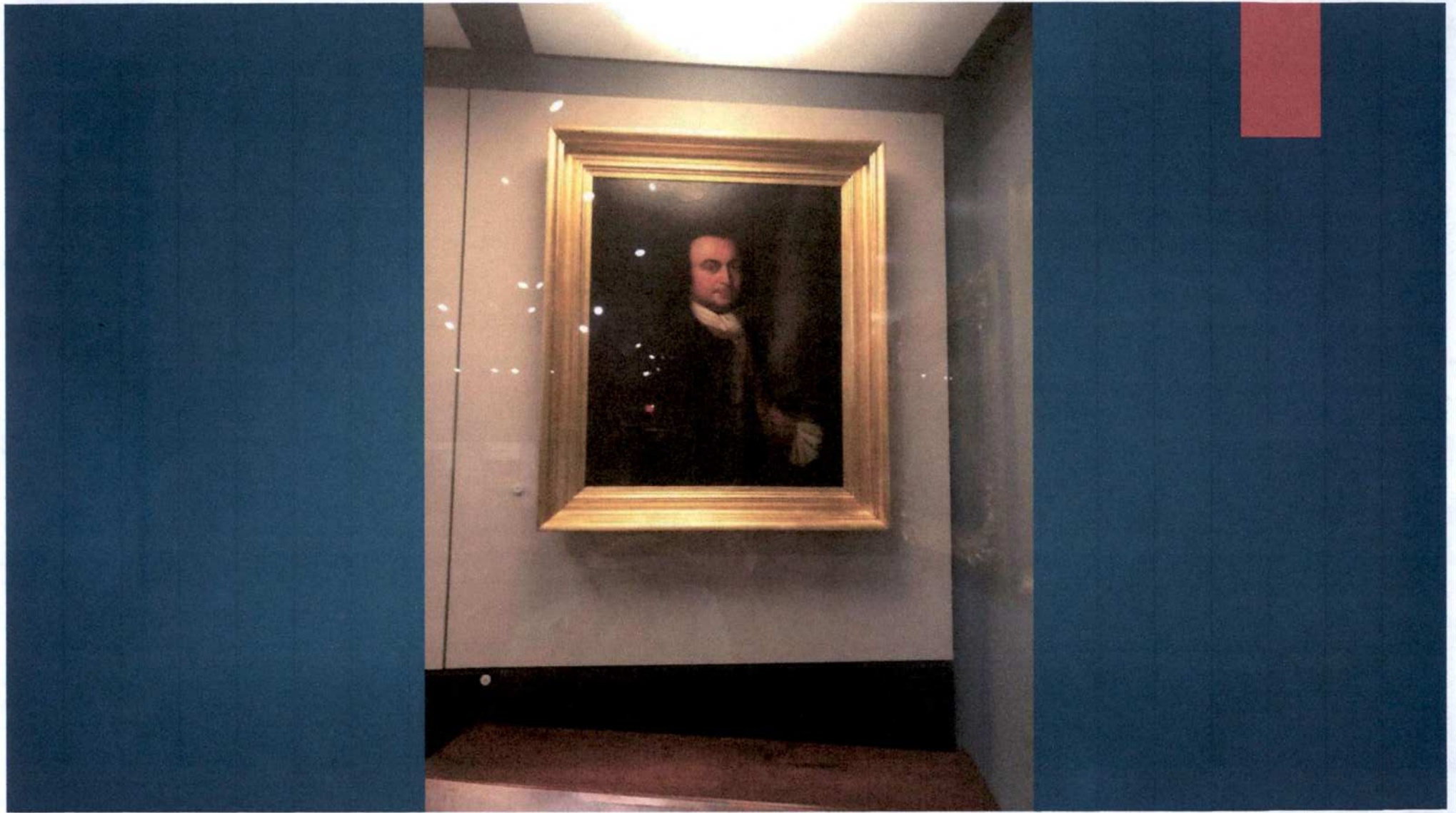
**Virginia Constitutional Convention of 1869-1870**

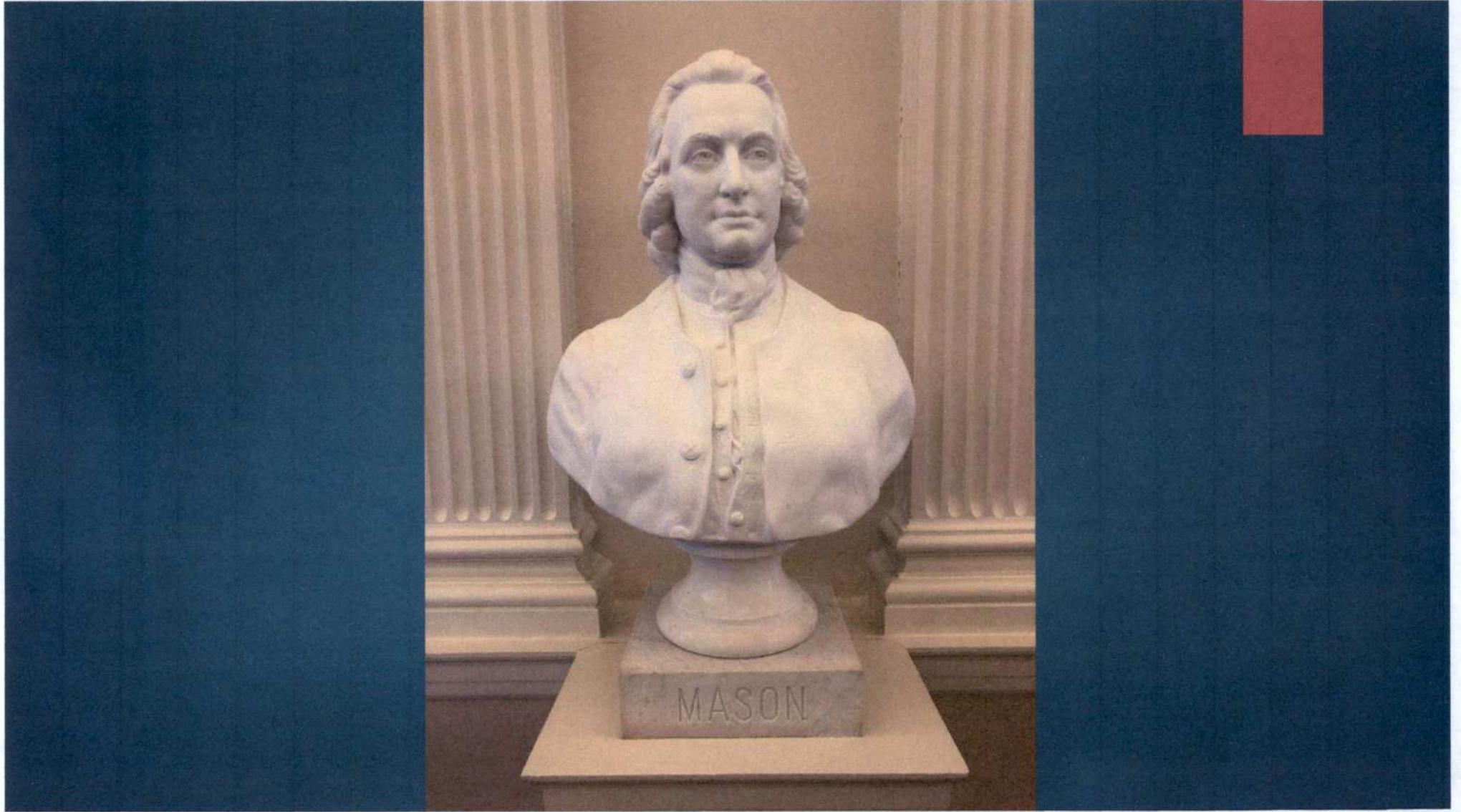
In 1867 Congress required 30 of the southern states which had seceded in 1861 to hold state constitutional conventions and admit their constitutions in order to rejoin the Union. Virginia's constitution was held December 1867 to April 1868 in the Old House Chamber at the Capitol. Various four of the 300 elected delegates joined African Americans. The other 296 were constitution drafted by election since in 1867 provided for temporary representation until a state constitution for the Union. Since the primary action and a final approval for future amendments. Congress and President Ulysses S. Grant provided Virginia's right to representation in Congress at January 1870 and the 22 military occupation of Virginia ended in the spring of that year.



THE STATE CONVENTION AT RICHMOND, VA., IN 1869-70. - See Page 246.

Page 11, 1869









“

**The fact is unquestionable, that the Bill of Rights and the Constitution of Virginia were drawn originally by George Mason, one of our really great men, and of the first order of greatness.**

”

Thomas Jefferson to Judge Woodward,  
March 25, 1825





"L'homme est  
né libre,  
et partout  
il est dans  
les fers"

ROUSSEAU  
DU CONTRAT SOCIAL



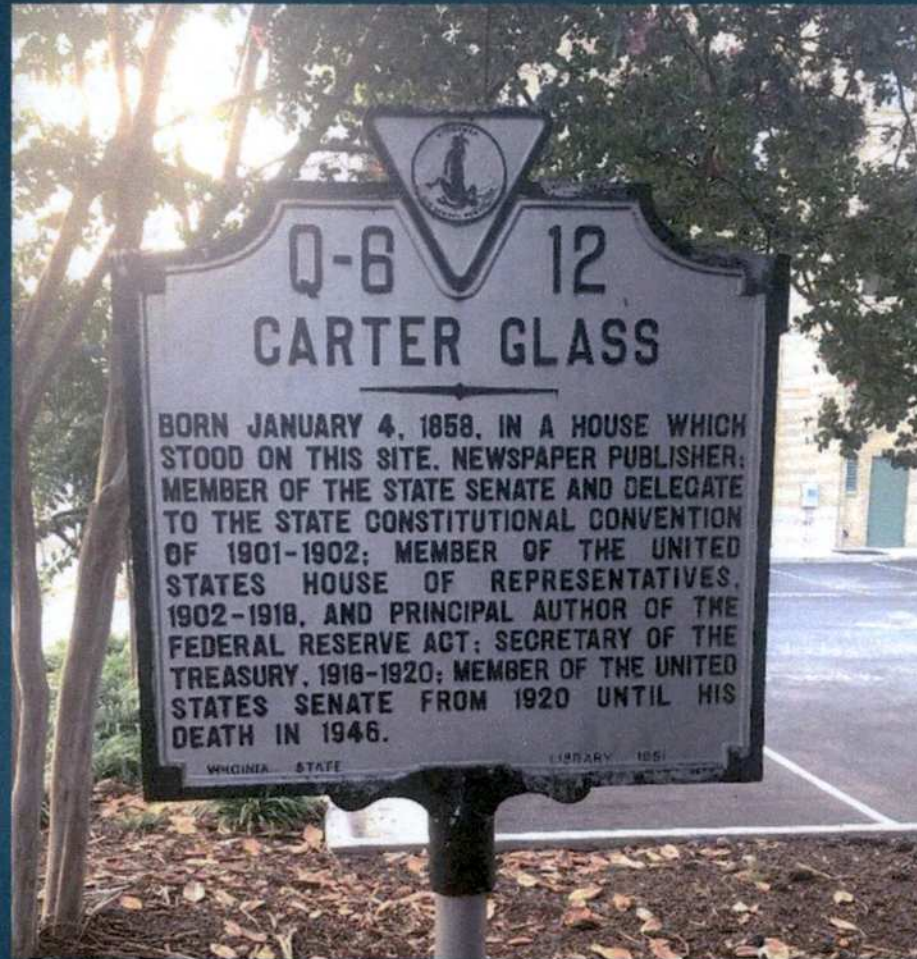
# LEGACY

"Too few Americans realize the vast debt we owe [George Mason]. His immortal Declaration of Rights in 1776 was one of the finest and loftiest creations ever struck from the mind of man. George Mason it was who first gave concrete expression to those inalienable human rights that belong to every American citizen and that are today the bedrock of our democracy. . . That is why

I say that George Mason will forever hold a special place in our hearts."

— Harry Truman, 1949





## Carter Glass's influence for good and bad was enduring

Joe Stinnett  
Sep 15, 2017



Publisher Carter Glass lays hot lead in this undated photograph.

Joe Stinnett

**L**ynchburg's Carter Glass was one of the best-known American figures of the era which stretched from before the Civil War to after World War II.

Series 4  
28 34  
Radio 31  
en 25

Cloudy With Rain or Freezing Rain Likely

22.884

RICHMOND, VA. 23213, WEDNESDAY, JANUARY 10, 1968  
Cold Thursday, High in the 30s. (Other Data on Page 13)

Home Edition

123,665

10 CENTS

Largest Evening  
Circulation in Virginia

# Godwin Asks \$70 Million Debt, Study of Virginia's Constitution

## Message Stresses Education

It was to education that Governor Godwin devoted a big share of his words in his message today to the Virginia General Assembly.

It was for education, public and higher, that he recommended the biggest slice of the Virginia money pie during the two-year biennium beginning July 1.

He wants \$20 million for a kindergarten program, "with a local option of applying the proceeds to a nine-month program or one of shorter duration."

He outlined, without specifics, a budget that would provide nearly \$64 million from the general fund and general obligation bonds for new buildings at four-year colleges and \$53 million more from revenue bonds.

He proposed an increase in state aid to public schools from \$100 for each pupil in average daily attendance to \$110 the first year and \$125 the second year of the biennium.

He suggested the building of seven new community colleges. He recommended state support to localities for 100 more guidance counselors and 200 more special education teachers than in the current year. The numbers now are approximately 500 and 1,000, respectively.



Gov. Godwin (left) at Coliseum today with Del. D. French Slaughter Jr. (right) after Slaughter's arrival in Richmond for the opening of the 1968 General Assembly.

## Windfall Fund Used In Budget

By CARL SHIRES

Initial steps toward state borrowing of \$70 million and an overhaul of an outdated state constitution were recommended today by Governor Godwin to Virginia legislators commencing their session here.

These proposals were among the most significant as the Governor presented a imposing array of evolutionary legislative recommendations to the lawmakers.

The governor cited the needs and told General Assembly members they ought to perform during the next 60 days the legislative deeds to get Virginia further up the road of progress.

True to previous commitment, he proposed no new state taxes.

### AWAY FROM TRADITION

He asked the legislators, though, to take the first step away from Virginia's traditional pay-as-you-go fiscal policy in preparation for borrowing the \$70 million for use in higher education and mental health building programs.

His message came at approximately 7:30 p.m., after the 100 lawmakers had gathered at noon and gone through

## Highlights

Here are highlights of legislative recommendations from Governor Godwin to General Assembly members here today:

**State Borrowing** — Set in motion the steps necessary to borrow \$70 million for upgrading higher education and mental health facilities in Virginia.

**Constitutional Changes** — Provide for appointment of a commission to recommend an overhaul of the state's Constitution — to be followed by a commission report and special assembly session next year.

**Public Education** — An increase of \$100 million, from \$688 million to \$788 million, for public schools over the general fund budget for the current biennium. Teacher minimum salaries to increase from \$4,000 to \$5,000, more state aid to public schools, \$20 million for kindergarten.

**Higher Education** — \$117 million building program at four-year colleges, seven new community colleges.

**James River Channel** — Action to deepen it, now that studies and reports are complete.

**Labor Benefits** — Increase maximum unemployment benefits from \$42 to \$60 weekly and workmen's compensation maximum benefits from \$65 to \$80 weekly.

**Public Health and Welfare** — \$20 million in the last year of the biennium alone to start a beginning of the new federal program of Medicaid.

**Budget** — Indications of a revised one, with details to be supplied in budget message tomorrow. General fund increase from present \$228 million to \$1,301 billion. Total budget that might approach \$3 billion indicated.

**Accelerated Tax Collections** — Require major corporations to pay their taxes earlier and more frequently — a move designed to put a 191.5 "windfall" into treasury.

**Lawlessness** — A pledge by Godwin to use "full resources" if "rising tempo of studied lawlessness" spreads to Virginia.

**Highway Safety** — An observation that there is an "increasing" impotence with half-way measures.

**New Richmond Area University** — "I earnestly recommend" the concept of union of Richmond Professional Institute and Medical College of Virginia.

**Metropolitan Areas Study (Hahn Commission)** — Limited endorsement of re-union get-together recommendations, with note that some proposals raise constitutional questions.

**Liquor-by-the-drink** — No comment, 20 words, in recommendation from the Governor.



AP Wirephoto

...ure taken by Surveyor 7 after its landing is a surface littered with rocks and boulders. At left is the spacecraft's conical antenna and photometric sensor at the end of the boom (upper left).

## Surveyor Films Best Scene

...is any geological difference between the highlands where Surveyor 7 came down and the plains where manned landings are planned as early as next year.

Surveyor 7, launched from Cape Kennedy, Fla., Sunday, carries a small scoop to dig trenches as deep as 18 inches and a device to analyze lunar soil with radiation.

Flight controllers at Jet Propulsion Laboratory said there

Brooklyn Heart

## Governor Backs

• Top of message, Page 8.  
• Middle of message, Page 9.

...the west.  
 ...in the 30s.  
 Tomorrow: Fair and  
 cold.  
 Last Date on Page B-3  
 118th Year

# Richmond Times-Dispatch

149,340  
 Largest Morning  
 Circulation  
 in Virginia

- \* - \*

Volume 118  
 NUMBER 22

Richmond, Virginia, 23211, Thursday, January 11, 1968

10 Cents



Gov. Godwin Delivers Message, With Pensive Faces in Background  
 Speaker John Warren Cooke (left) and Lt. Gov. Fred G. Pollard

## 'Pay as You Go' Is Barrier To Progress, Godwin Says

### Reaction To Speech Is Mixed

By Hamilton Crockett

Democrats — with some notable exceptions — voiced the strongest praise and Republicans reacted critically to the governor's message yesterday.

The general comments ranged from the "good, good" of veteran Sen. M. M. Log II to "very realistic" and "a great speech."

But a few highly placed Democrats took a dim view of the prospect of forsaking "pay-as-you-go" fiscal policy.

Republicans took aim especially at the method Gov. Mills E. Godwin Jr. proposed for revising the State Constitution generally. They favored an "unrestricted" convention, followed by a referendum, rather than the route of a study commission, approval by two consecutive legislatures and then by a popular referendum.

And they said they were "shocked that absolutely no economic aid was suggested" in state operations.

James River Channel

Richmond area lawmakers reacted feverishly to the speech, several making especially Godwin's recommendation for deepening the James River channel. (See separate story, Page B-1.)

### Message Highlights

Among major planks in the legislative program outlined to the General Assembly yesterday by Gov. Mills E. Godwin Jr. were:

**FISCAL POLICY** — A \$70 million issue of general obligation bonds to meet building needs at state colleges and mental hospitals — in effect, the abandonment of an old no-borrowing tradition.

**FISCAL DISCOVERY** — A one-time tax windfall of about \$61.5 million could be created in 1968-70 by the acceleration of collecting some tax receipts without increasing any tax rates.

**1968-70 BUDGET** — General fund appropriations for operating purposes would soar to more than \$1.3 billion from the 1966-68 figure of \$878 million. There would also be a \$107 million capital outlay program, plus other capital outlays from revenue bonds and special funds.

**CONSTITUTIONAL REFORM** — A study commission should be created to consider sweeping revisions in the State Constitution of 1902 and report to an extra session of the assembly of 1969.

**PUBLIC SCHOOLS** — State appropriations should be increased by \$139 million to nearly \$570 million, with \$20 million for kindergartens, \$5,800 minimum salary for teachers and other gains.

**HIGHER EDUCATION** — For new buildings, about \$64 million from the general fund and general obligation bonds, plus more than \$53 million from revenue bonds. Approval of the "general concept" of the Wayne commission plan for merging Medical College of Virginia and Richmond Professional Institute.

**HAIN COMMISSION** — Take the initial steps recommended by the study group on metropolitan area development and prepare for "calm, cooperative action" while awaiting the settlement of constitutional questions that involve other recommendations.

**MEDICAID** — To help begin the federal program in Virginia, an appropriation of \$10 million in 1967-70.

### Governor Keys Program To Limited Borrowing

By James Latimer

Gov. Mills E. Godwin Jr. told Virginia yesterday that it must give up the no-borrow fiscal policy it has cherished so long under the name of "pay as you go" — or else bring this state's progress "to a grinding halt."

The governor urged his words directly at the members of the 1968 General Assembly, but he seemed to be firing the first shot in what promises to be Virginia's greatest public debate of the year.

Editorial comment, Page A-12. Other Assembly News, Page B-1.

As had been expected, Godwin offered the now Assembly a legislative program keyed to making use of the state's unused tax limited borrowing power.

He called for the issuance of \$70 million worth of general obligation bonds to finance badly needed new buildings at the state's colleges and mental hospitals.

And he urged notice that he plans to fight all-out for his revised plan in the statewide referendum.

emphasis that must be held next November if the 1968 Assembly gives its approval.

Constitution Revision

Godwin's state-of-the-union message to the assembly also would turn Virginia onto another path of major change via a move to reconstitute the Constitution of 1902.

He asked the newly convened session to authorize the creation of a study commission that would consider sweeping revisions in the Constitution and report to a special session of the assembly in early 1969.

Administration leaders in both branches promptly introduced measures to give the governor an interrelated constitutional study commission.

The new House Speaker, Del. James H. Thurmond of Henrico, was named by a delegate as co-chairman of the study commission in the House.

The House of Delegates, headed by a team of seven co-chairmen in the Senate.

Reaction Mixed

Reaction to Gov. Godwin's message in the House legislative program was mixed.

The Republican majority of 14 delegates and six senators disagreed with the study commission approach in constitutional matters. They said they would support the study commission instead.

### With Heart Transplant

## Brooklyn Patient Dies

From Wire Dispatches  
 ...the world's first  
 ...transplant recipient, died  
 ...Monday. He died after he  
 ...given a woman's heart in  
 ...operation.

...and report them to the  
 ...proper medical sources."  
 ...Block was reported in "yesterday's  
 ...satisfactory conditions."  
 ...immediately after the surgery.

...of the lungs due to the  
 ...patient's long-standing heart  
 ...disease.

...Block was the 50th such  
 ...patient in 31 days in the  
 ...city.

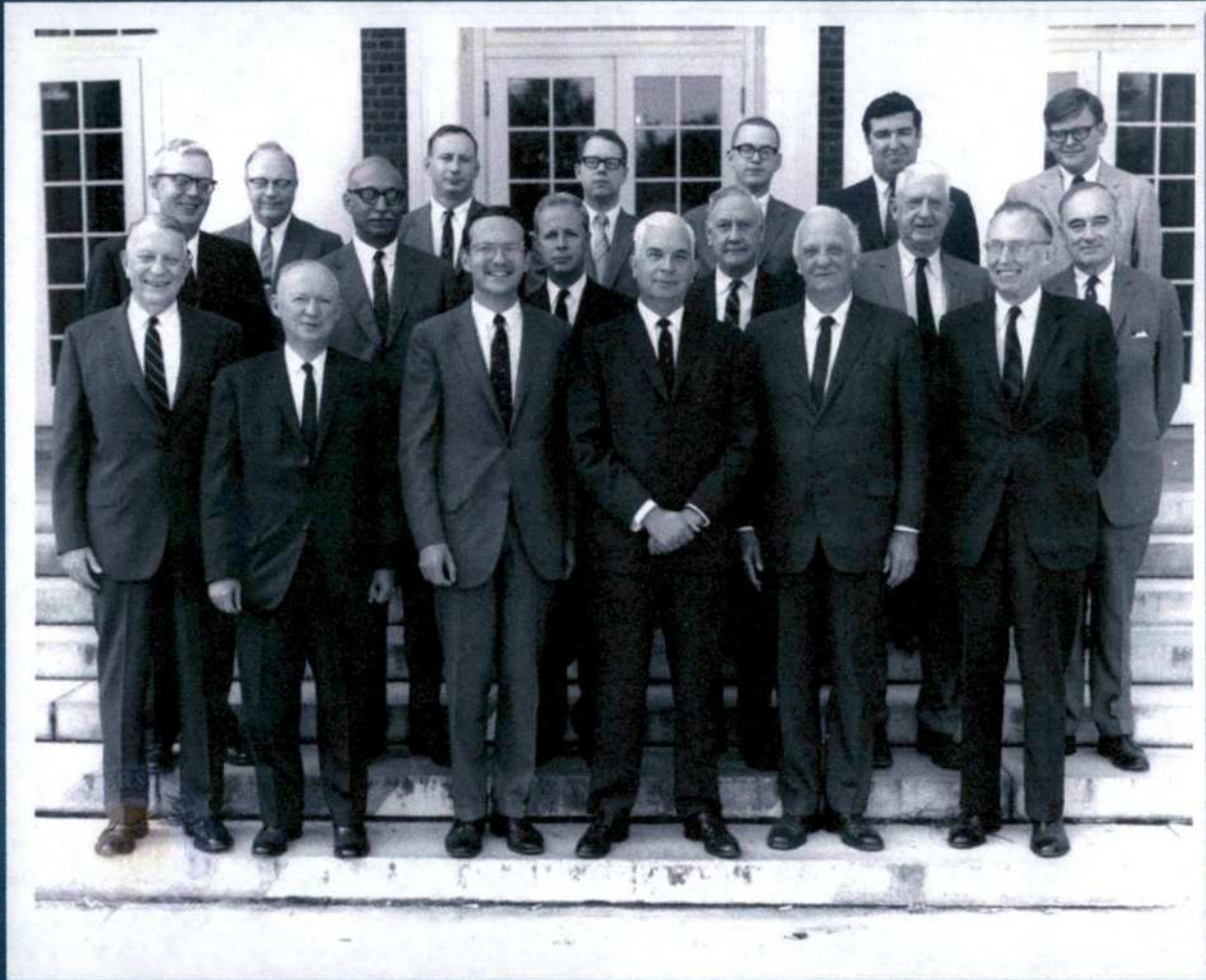
### Tighter Border Policing

## Sihanouk Reports Accord

From Wire Dispatches

...Cambodia to Sihanouk's  
 ...office in  
 ...Paris.

...Paris office in  
 ...Paris.



**The Weather**  
 Today: Fair, un-  
 clouded. High  
 25 to 30.  
 Tomorrow: Slightly  
 warmer.  
 Local Time on Page A-3  
 119th Year \*

# Richmond Times-Dispatch

202,000  
 Largest Sunday  
 Circulation  
 in Virginia

Richmond, Virginia, 23211 Sunday, January 12, 1969

## Revised State Constitution Offered By Commission Headed by Harrison

### Highlights Of the Report

- Here, in capsule form, are some of the major recommendations unveiled yesterday by the Virginia Commission on Constitutional Revision.
- FISCAL POLICY**—Permit the General Assembly to use general obligation bonds and new-type revenue bonds for specific capital outlays.
  - LOCAL GOVERNMENT**—Simplify and streamline city and county government provisions, provide for a new Commission on Local Government.
  - EDUCATION**—Assert the state's duty and financial responsibility to provide high quality public schools throughout the state. Permit some state help for private, non-profit colleges.
  - LEGISLATURE**—Lengthen biennial sessions from 60 to 90 days, but make no provision for annual sessions.
  - GOVERNOR**—Give ~~himself~~ reorganization powers, but keep prohibition against governor succeeding himself.
  - ELECTIONS**—Reduce minimum residence requirement for voters from one year to six months, provide for permanent registration and permit "fair" literacy tests.



Constitutions Can Be Fun: Gov. Mills E. Godwin Jr., Justice A. S. Harrison Jr.

### Ceremony in Wren Building

## Godwin Gets Revision Study

### Limited Use Of Borrowing Is Envisioned

By James Lathrop  
 A revised State Constitution that looks more to the future than to the past was given a Virginia yesterday.

Proposed changes in the basic law of the Commonwealth would turn the 60th birthday toward the 21st Century by:

- Opening a long locked constitutional door to permit limited use of the state's borrowing power. This envisions a carefully controlled policy of financing capital outlays in part by bonds, in part from current revenues.
- Providing for thorough modernization and growth for local government by city, county and region. This contemplates a Deville approach to solving the growing pain problems of metropolitan areas.
- Placing top emphasis and unconditional support to "high quality" public schools throughout the state. The goal here is equal educational opportunity for all children in all parts of the state.
- Giving more weight to the rights of the people of color, and to the needs of the poor.

#### Related Stories

Proposed, including...  
 Page A-2  
 Measure if state...  
 Page A-2  
 This bill would...  
 Page A-2  
 Expanded review...  
 Page A-2  
 Governor to...  
 Page A-2  
 The...  
 Page A-2

### Key Speech Set Tuesday By Johnson



# Howard Heads Constitution Committee

By Shelley Rolfe

A. E. Dick Howard, who served as executive director of the Virginia Commission on Constitutional Revision, was given the job yesterday of heading a committee that will try to sell the new constitution to the voting public.

A four-part constitutional revision package will be on the ballot in November's general election.

Howard's appointment as executive director of a committee that has not yet been given a name was announced at a late afternoon press conference and was made in the name of Gov. Linwood Holton.

AT THE TIME of the press conference, Holton had just landed in Paris to begin a 10-day U. S. State Department sponsored visit to France. A statement issued by the governor's office said that the 36-year-old Howard, associate dean of the University of Virginia Law School, had agreed to head the campaign committee in a talk with Holton on Tuesday.

The tone of the press conference was highly informal. Howard set the tone by telling newsmen he would not observe the formality of reading a statement he had prepared to mark his appointment.

In the prepared statement, Howard said, "This is a Constitution well worth working to ratify. Much thought and deliberation have gone into it.

"The Constitution enjoys firm bipartisan support, including that of Gov. [Mills E.] Godwin [Jr.], who in 1968 asked for the revision to begin, and that of Gov. Holton, who will see it through to referendum this year."

TWO SUCCESSIVE SESSIONS of the General Assembly have approved the four-part constitutional package that will be submitted to the voters for ratification. Each part will be voted on separately.

The parts include the main body of the modernized constitution, a proposal that would permit the General Assembly to legalize lotteries and two bond financing proposals. The bond proposals would move the state further away from its traditional pay-as-you-go concept, a process begun in 1968 when voters, by approximately a 2 to 1 margin, approved issuance of bonds equal to 1 per cent of the total assessed value of real estate in the state.

One of the constitutional bond proposals would raise the state's general obligation bond borrowing limit to approximately \$600 million. Each bond issue would require voter approval.

The other would permit issuance of revenue bonds with the full faith and credit of the state. The revenue bonds could be issued without a referendum but would require recommendation by the governor and approval by a two-thirds vote of the General Assembly.

HOWARD SAID the main thrust of the campaign committee will be to conduct an "enormous" educational program to combat the "general inertia, apathy and indifference one has to overcome in a referendum of this sort."

He recalled that in 1968 proponents of a new Maryland constitution "were confident of its passage and it lost." Howard indicated he thought the Maryland proponents had conducted a poor education campaign . . . "a mistake I hope we won't make."

The campaign committee will begin operations about June 1, Howard said, and maintain headquarters in Richmond. He said the campaign committee would send approximately \$100,000 . . . "all of it from private sources."

Howard is a Rhodes Scholar who was No. 1 in class at the University of Richmond and the University of Virginia law school.



Staff Photo by Don Pennell

A. E. Dick Howard  
Educational Campaign Ahead

# Now Virginia's Up to Date

Concerned Citizens  
**DON'T LET IT HAPPEN**

STOP LOOK GO — Vote — No November 1



" SOME OF THE PROPOSALS ARE SO COMPLEX THE PEOPLE MUST  
ACCEPT THEM ON FAITH " EX-GOVERNOR GODWIN .


*Foes of constitutional revision used this cartoon on handbills.*



What was the vote on November 3, 1970?


576,776: Yes 226,219: No  
(71.8% to 28.2%)

Lynchburg Vote: 7,271 to 2,861



The right to be free from any governmental discrimination upon the bases of religious conviction, race, color, sex or national origin shall not be abridged.





That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and the Commonwealth should avail itself to those talents which nature has sown so liberally among its peoples by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth



It shall be the policy of the Commonwealth to conserve, develop and utilize its natural resources its public lands and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit and enjoyment and general welfare of the people of the Commonwealth.

