



The Warren and Rehnquist Courts and the Struggle for Civil Rights

It is difficult for most people today to realize how brutal America was to its Black citizens for throughout of our history. In the South, lynching, intimidation, economic exploitation, social humiliation and virtually complete segregation dominated the region; few Blacks dared to vote. In the North, where Blacks could vote, discrimination and segregation were also the norm.

The condition of Southern Black schools was particularly appalling. In Clarendon County, South Carolina, one of the school systems represented in the school desegregation decision *Brown v. Board of Education (1954)*, there were no indoor or outdoor flush toilets at any of three Black schools, only outhouses and not nearly enough of them. Drinking water came from open buckets with dippers for the children who attended the two Black elementary schools. There was no running water at one Black grade school and no electricity at the other. In one elementary school, there was not a single desk. White children had bus transportation if they needed it, but Black children had no transportation to their schools, which were located in isolated, underdeveloped areas.

The unanimous decision in *Brown* striking down the laws mandating public school segregation thus fell like a thunderbolt on the South. Centuries of White supremacy in law and custom were threatened. At first, many Southerners appeared ready to comply. National leadership was lacking, however, for President Dwight Eisenhower made it clear he was not happy with the Court's decision. Then, in *Brown II (1955)*, the Court made what many came to consider a wrong turn: it permitted the local school boards to desegregate gradually, under federal court supervision. Ten years later, only 2.14% of Southern Black children attended desegregated schools.

Nevertheless, during those years, segregation was outlawed in all municipal facilities - parks and recreation areas, transportation, libraries and courtrooms, as well as in hotels, restaurants, and other public accommodations. And in 1967, the Supreme Court struck down laws forbidding interracial marriage. In all these matters, Chief Justice Warren's Court (1953-1969) played the key role.

The civil rights movement benefited not only Black people. The legal successes of the movement for racial justice in the 1960s encouraged women, prisoners, farm workers and, in later years, the disabled, elderly, gays and others to organize and to take their issues to Congress and the courts.

In 1968, during Chief Justice Warren's next to last term, the Court decided not to tolerate any further delay by Southern school boards in desegregating public schools. In *Green v. County School Board*, the Court ordered that racial segregation in the public schools be eliminated immediately "root and branch." Two years later, in *Swann v. Charlotte-Mecklenburg*, the Court spelled out the measures to achieve desegregation, including bus transportation of children where needed.

All these school decisions were unanimous. But in 1972, President Richard Nixon appointed William H. Rehnquist to the Supreme Court and the following year saw the first crack in this unanimity. Rehnquist dissented from one of the Court's most important school desegregation decision, *Keyes v. Denver School Dist. No. 1* which required Northern and Western school districts to desegregate. In his lone dissent, Rehnquist made clear that he disagreed with the *Green* case's strong desegregation mandate.

Rehnquist's vote was not surprising. As a Supreme Court law clerk in 1953 he had opposed the *Brown* decision, declaring in a memorandum, "I think *Plessy v. Ferguson* [the case that approved "separate but equal" facilities] was right and should be reaffirmed."

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Extending desegregation to Northern schools fueled the already simmering White backlash. The nation began to undergo economic hardship as the prosperity of the 1950's and 1960s faded. For a variety of reasons, during the 1970's many cities were chronically short of money and the schools inevitably suffered. A vicious cycle developed. First, affluent White families left for the green grass and better schools of the suburbs leaving cities with even less money to spend. This, in turn, led even more middle-class people to abandon the cities.

In 1974, the most serious blow fell in *Milliken v. Bradley*, a case from Detroit. Because of Detroit's overwhelming Black population, the only way to desegregate the schools was to integrate them with the overwhelmingly White suburban schools. The four justices appointed by President Nixon, plus one of the conservative justices of the Warren era, overturned a court order integrating the city and suburbs.

The Court's ruling set a precedent and prevented any chance of desegregating almost all urban public school systems, since Detroit's overwhelmingly minority school population was typical of most large cities.

Despite these setbacks, many school desegregation suits continued during the 1970's and 1980's, often quite successfully; the *Charlotte-Mecklenburg* case was one example. This is because three of Nixon's justices, Harry Blackmun, Lewis Powell and Chief Justice Burger [in his early years] were moderates. And in Blackmun's case, he soon became quite liberal. The Burger Court, therefore, continued to support civil rights, though with several important exceptions like the *Milliken* case. Two of its most significant contributions were to facilitate employment discrimination suits under Title VII of the 1964 Civil Rights Act and to approve affirmative action in government contracts, employment and education. This was soon to change.

In 1981, Ronald Reagan became President. Reagan, who had opposed the Civil Rights Acts of 1964 and 1965, built his political strategy on capturing and holding the South. His first appointment, Sandra Day O'Connor, quickly showed herself to be no friend to civil rights litigants. In 1986, when Chief Justice Warren Burger retired, Reagan made Rehnquist Chief Justice and appointed Antonin Scalia to the Court. With the arrival of Justice Anthony Kennedy in 1988, there was now a majority that seemed to have little sympathy for vigorous civil rights enforcement.

The majority quickly went into action. In 1989, the Court nullified virtually all affirmative action plans in state and local government contracts and issued seven decisions undermining the enforcement of Title VII employment discrimination suits; all the Title VII decisions were overturned by Congress in 1991. The voting rights laws were also weakened. One of the few exceptions to this pattern came in 2003, when a narrow 5-4 majority continued to allow universities and colleges to consider racial differences in their admissions policies in order to bring diversity to their student bodies.

The most seriously affected by the Rehnquist Court's actions were America's public school children. During the 1990s, in two decisions from Oklahoma City [*Board of Education of Oklahoma City v. Dowell*] and Kansas City [*Missouri v. Jenkins*], both of which had mandated public school segregation before 1954, the Court ruled that the school districts in question did not have to desegregate, even though most of the Black children in those districts still went to segregated schools. The Oklahoma City school board had adopted a neighborhood school policy. On its face, the policy is racially neutral, but because residential segregation was still widespread, the school board knew that a neighborhood school policy would resegregate the schools and reverse the progress already achieved. Nevertheless, the Court ruled in favor of the board. In the Kansas City case, a 5-4 majority of the Court overturned a lower court ruling that ordered Missouri to pay for improvements to Kansas City's schools to make up for years of neglect resulting from segregation and to attract suburban students. The Court considered this a violation of the *Milliken* ruling.

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In these cases, the Court majority focused not on eliminating segregation and its effects, but on ending desegregation and returning the districts to local control free from any federal court supervision, even though it was unfettered local control that had created the segregation in the first place.

The result of these decisions and of the Detroit case is that efforts at public school desegregation are now virtually doomed. The Oklahoma City and Kansas City decisions led many other cities to try to get out from under their desegregation decrees. In some places like Austin, Texas, schools quickly resegregated by adopting neighborhood school policies, undoing the progress of earlier years. The percentage of Black students attending schools that were 90-100% non-White had fallen to 32% in 1988 but rose to 37% by 2000; Blacks attending schools that were majority White schools dropped from 43.5% in 1988 to 31% by 2000.

The situation is at its worst in states with large urban populations. In 2000, some 62% of Black students in Michigan were attending schools with a non-white enrollment of 90 percent or more. The same was true for 61% of Black students in New York, 60% in Illinois, and 50% in New Jersey and Maryland.

Americans still remain sharply divided by race. Nevertheless, racial progress in America since 1954 has been immense. The credit for much of that goes to the Warren Court, which blazed the way. Where school desegregation is concerned, however, much of that progress has been undone by the rulings of Chief Justice Rehnquist and his colleagues. As a result, this generation of Black youngsters, and perhaps others to come are being denied what the Constitution guarantees all American children – an equal opportunity to a good education, the precondition for a decent life.

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