

Race, the 14th Amendment & Our Schools: The Supreme Court Rules

by Alan Shapiro

To the Teacher:

What constitutes racial discrimination in our schools? The Supreme Court considered competing answers to this question in its June 2007 ruling. The student readings below examine the issue and its historical background, including *Brown v. Board of Education* and the 14th Amendment.

The first student reading includes an overview of the Louisville and Seattle cases, which led to the Supreme Court ruling, and excerpts from the plurality Supreme Court ruling and dissenting opinions. The second reading offers other competing views of the decision and new approaches to achieving school racial diversity. Discussion questions and other suggested student activities follow.

See also "[Affirmative Action and the Courts](#)," which considers Supreme Court decisions on the university level, including two for the University of Michigan in 2003. It includes inquiry activities that would also be appropriate for historical background.

Student Reading 1: Three interpretations of the Constitution

Two racial discrimination cases

Crystal Meredith moved into a Louisville, Kentucky, school district in August 2002. When she tried to enroll her son Joshua in kindergarten at a school a mile away from their home, she was told there was no available space. But Joshua could be enrolled in a different elementary school ten miles away.

Instead, Meredith tried to enroll Joshua in yet another school a mile away where there was room. Jefferson County officials refused her son's admission because "the transfer would have an adverse effect on desegregation compliance." The admission of any white child like Joshua, even though there was room, would upset the schools' racial balance.

Before 1975 the Louisville schools were segregated by law. From 1975 to 2000 they operated under a federal court order to desegregate. In 2000 the court declared it was satisfied with the district's efforts. The Louisville schools then instituted the plan that governed Joshua's placement in school. Joshua's mother filed a lawsuit, claiming that her child's rights under the 14th Amendment's guarantee of "equal protection of the law" had been violated. As *Meredith v. Jefferson County Board of Education*, her suit reached the Supreme Court in January 2006.

So did another suit, *Parents Involved in Community Schools v. Seattle School District No. 1*. This case also involved a program that used race as a determining factor in school admission. Seattle's schools were never legally segregated, but because Seattle neighborhoods are mostly white or mostly black, the schools had severe racial imbalances. So the city enacted a program to remedy the problem, but for high school only.

Lower courts had ruled that the Louisville and Seattle programs were constitutional. The programs are similar to those in hundreds of other school districts. All are attempting to adhere to the historic Brown v. Board of Education Supreme Court ruling in 1954 that declared school segregation unconstitutional.

The Supreme Court ruling

But 53 years later, on June 28, 2007, the Supreme Court voted 5-4 that the Louisville and Seattle programs were unconstitutional. Chief Justice John Roberts said their programs were "directed to racial balance, pure and simple," and therefore violated the 14th Amendment.

To support this view, the chief justice quoted the words of a lawyer who spoke before the Supreme Court in 1954 in favor of ending segregation: "We have one fundamental contention which we will seek to develop in the course of this argument, and that contention is that no state has any authority under the equal-protection clause of the Fourteenth Amendment to use race as a factor in affording educational opportunities among its citizens."

Chief Justice Roberts wrote: "There is no ambiguity in that statement....What was required was 'determining admission to the public schools on a nonracial basis.' What do the racial classifications do in these cases [Louisville and Seattle], if not determine admission to a public school on a racial basis?...."

"For schools that never segregated on the basis of race, such as Seattle, or that have removed the vestiges of past segregation, such as Jefferson County, the way 'to achieve a system of determining admission to the public schools on a non-racial basis,' is to stop assigning students on a racial basis. The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."

Justice Kennedy's call for "narrowly tailored" programs

Justice Anthony Kennedy was one of the five justices who agreed that the Louisville and Seattle programs were unconstitutional because each used race as a determining factor in school admissions. But he disagreed with the implication "that race cannot be a factor in instances when, in my view, it may be taken into account. The plurality opinion is too dismissive of the legitimate interest government has in ensuring all people have equal opportunity regardless of their race...."

"To the extent the plurality opinion suggests the Constitution mandates that state and local school authorities must accept the status quo of racial isolation in schools, it is, in my view, profoundly mistaken." Justice Kennedy concluded that "narrowly tailored" programs can avoid racial isolation and achieve racial diversity constitutionally.

Four justices' minority dissent

Writing for the four justices who dissented from the decision, Justice Stephen Breyer declared, "For much of this nation's history, the races remained divided. It was not long ago that people of different races drank from separate fountains, rode on separate buses and studied in separate schools. In this court's finest hour, Brown v. Board of Education challenged this history and helped to change it. For Brown held out a promise. It was a promise embodied in three amendments designed to make citizens of slaves. It was the promise of true racial equality...."

"Today...attitudes toward race in this nation have changed dramatically. Many parents, white and black alike, want their children to attend schools with children of different races. Indeed, the very school districts that once spurned integration now strive for it. The long history of their efforts

reveals the complexities and difficulties they have faced. And in the light of those challenges, they have asked us not to take from their hands the instruments they have used to rid their schools of racial segregation, instruments that they believe are needed to overcome the problems of cities divided by race and poverty. The plurality would decline their modest request....

"The last half-century has witnessed great strides toward racial equality, but we have not yet realized the promise of Brown. To invalidate the plans under review is to threaten the promise of Brown. The plurality's position, I fear, would break that promise. This is a decision that the court and the nation will come to regret."

For discussion

1. What questions do students have about the reading? How might they be answered?
2. What does the 14th Amendment have to do with the Louisville and Seattle programs?
3. What was Chief Justice Roberts' main argument against the constitutionality of those programs? Did he support the Brown decision? Why or why not?
4. Why did Justice Kennedy vote for the Roberts' position but also criticize it?
5. According to Justice Breyer, what is "the promise of Brown"? How and why will the Court decision "break that promise"? What are the "three amendments" he refers to? What do they have to do with "true racial equality"?
6. Which of the three arguments do you favor and why?

Student Reading 2: Competing views and other solutions

In the Louisville and Seattle cases, the nine Supreme Court justices agreed on one thing: They were being faithful to the 1954 *Brown v. Board of Education* decision that declared school segregation unconstitutional. How is this possible?

Laurence Tribe, a law professor at Harvard, maintains that "There is a historic clash between two dramatically different visions not only of Brown, but also the meaning of the Constitution."

The four justices supporting the Roberts' opinion said the equal-protection clause of the 14th Amendment and the Brown decision require school districts to stop assigning students to schools on the basis of race, to be "colorblind" in making decisions about which public school a student is to attend.

The four justices supporting the Breyer opinion said the reverse, that school districts must take race into account in making decisions about which public school a student is to attend, in order to avoid segregation.

Justice Kennedy's opinion fell somewhere in between. It limited the role of race in school district decisions about which public school a student is to attend but did not forbid it entirely.

Other competing views of the Supreme Court decision

- A Supreme Court majority "ruled that conscious racial integration is the moral equivalent of conscious racial segregation."
--Hendrik Hertzberg, *New Yorker*, 7/9/07 and 7/16/07
- "All that race was used for at that point in time (1954) was to deny equal opportunity to black people. It's to stand that argument on its head to use race the way they use it now."
-- Robert Carter, the lawyer who supported the Brown suit to end school segregation and was quoted by Chief Justice Roberts to support his 2007 decision
- "There is no question but that the principle of Brown is that a child's skin color should not determine what school he or she should be assigned to."
--Roger Clegg, president and general counsel of the Center for Equal Opportunity (*New York Times*, 6/29/07)
- "You can't really say that five justices are so smart that they can read the law and precedents and four others can't. Something else is going on."
--Jack Greenberg, lawyer for the plaintiffs in the Brown suit and now a law professor at Columbia University (*New York Times*, 6/29/07)
- "Let us now praise the Brown decision. Let us now bury the Brown decision. [It] is now out of step with American political and social realities. Desegregation does not speak to dropout rates that hover near 50 percent for black and Hispanic high school students. It does not equip society to address the so-called achievement gap between black and white students that mocks Brown's promise of equal educational opportunity....Racial malice is no longer the primary motive in shaping inferior schools for minority children. Many failing big city schools today are operated by black superintendents and mostly black school boards....With Brown officially relegated to the past, the challenge for brave leaders now is to deliver on the promise of a good education for every child."
--Juan Williams, a senior correspondent for National Public Radio and an analyst for Fox News Channel (*New York Times*, 6/29/07)

Other solutions

In light of the Supreme Court decision, hundreds of school districts will have to reconsider programs that use race as a factor in school assignments. Justice Kennedy, the fifth member of the majority but critical of Chief Justice Roberts' reasoning, said there were "narrowly tailored" ways to achieve racial diversity. He thinks the following could be acceptable to the Constitution, and he now holds the deciding vote in future Court decisions on public school racial diversity programs:

- Drawing new school attendance zones
- "Strategic site selection of new schools"
- Creating attractive special programs in schools with large minority student bodies

Another suggestion is to make family income an important consideration in assigning students. "If you switch to socioeconomic status," said Richard Kahlenberg, a senior fellow at the Century Foundation, "not only do you get a fair amount of racial integration that's legally bullet-proof, but the research shows that for individual students, it's more closely aligned with achievement, with higher test scores, than racial integration." (*New York Times*, 6/29/07)

But achieving racial diversity through an economically based program may or may not work, depending upon the makeup of a city. A San Francisco program based on family income has achieved diversity but not racial integration, at least in part because a majority of its students are of Chinese descent. A Raleigh, North Carolina, program has achieved racial diversity through a mix of a balance of low- and middle-income children, magnet schools and busing. But a Charlotte-Mecklenburg, North Carolina, district has had less success with a similar program because there isn't enough room in its schools to provide much choice. ("Diversity Plans Based on Income Leave Some Schools Segregated," *New York Times*, 7/15/07)

In New York City, where 75% of public school students are black and Hispanic, the New York Civil Liberties Union and other civil liberties activists are arguing for a "metropolitan solution" that would have students from nearby suburbs in Westchester and Long Island share classrooms with students from the Bronx, Brooklyn or Queens.

Columbia Professor Amy Stuart Wills said, "School districts are man-made. They are not laws of nature even though we act like they are." Wilmington, Delaware and St. Louis, Missouri schools pool urban and suburban neighborhoods in some schools, she added. (www.nysun.com, 7/12/07)

For discussion

1. What questions do students have about the reading? How might they be answered?
2. Key words in the Supreme Court's decision and in competing views of it are those of the 14th Amendment's "equal protection of the law." In this connection, consider Meredith's Louisville suit. What argument could she make that her son Joshua was denied this protection? What argument could a Jefferson County official make to counter hers?
3. Did the Court rule "conscious racial integration the moral equivalent of conscious racial segregation"? Why or why not?
4. Why does Robert Carter think that the Court's decision stands "equal opportunity on its head"? Why would Roger Clegg disagree?
5. "Something else is going on," wrote Jack Greenberg. What do you think he meant?
6. According to Juan Williams, why is Brown "out of step with American political and social realities"? What "realities"?
7. Consider "other solutions." Why might each be "narrowly tailored" enough to get five supporting votes on the current Supreme Court?
8. The 14th Amendment says that no state may "deny to any person within its jurisdiction the equal protection of the law." Why, then, weren't nine Supreme Court justices unanimous on the Louisville and Seattle cases?
9. Is achieving racial diversity in schools important for American schools? Why or why not?

For writing and/or discussion: "Equal opportunity" cases

Basing your opinion on the Louisville and Seattle decisions, how do you think the current Supreme Court would rule on each of the following situations? Why?

1. There are two elementary schools in Johnson County. In School A, 95% of the students are white, 5% are black. In School B, 95% are black, 5% are white. To achieve greater racial balance, Johnson County officials draw new school district boundaries. They result in an 80% white and 20% black student body in School A and a 60% white and 40% black student body in School B.

Robert and Jean Smith and their son Fred are white. He had been scheduled to enter kindergarten in School A, which is around the corner from their home. The new boundaries mean he will now go to School B, which is a mile away. The Smiths sue Johnson County officials, claiming their 5-year-old son is being denied "equal protection of the law" under the 14th Amendment by having to travel such a distance when there is a school around the corner. Their case reaches the Supreme Court. How does it rule? Why?

2. There are two elementary schools in Petersville within walking distance for all children in the town. In School A, 95% of the students are white, 5% are black. In School B, 95% are black, 5% are white. To achieve greater racial balance, Petersville school officials establish racial quotas for each school. Which school a student is to attend will be decided by separate lotteries for whites and blacks. The result will be an 80% white and 20% black student body in School A and a 60% white and 40% black student body in School B.

John and Winifred Williams and their daughter Wendy are black. Wendy had been scheduled to enter kindergarten in School B. But in the lottery, her name is not picked for that school. She is now scheduled to go to School A. The Porters sue Petersville officials, claiming that the racial quota system for the lottery denies Wendy "equal protection of the law" under the 14th Amendment. Their case reaches the Supreme Court. How does it rule? Why?

For writing

Does "racial equality" mean to you that schools should have a mix of students--black, white, Latino, Asian?

This lesson was written for TeachableMoment.Org, a project of Morningside Center for Teaching Social Responsibility. We welcome your comments. Please email author Alan Shapiro at: ashapiro7@comcast.net.