Desegregation's Demise

By Derrick Bell
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AFTER generating months of anxiety among both proponents and opponents of public school integration, the U.S. Supreme Court, in a predictably close 5-4 decision, ruled that the use of race in student-assignment policies by the Seattle and Louisville, KY, school districts violated the rights of the white petitioners whose children were denied admission to the schools of their choice. The decision covered *Parents Involved in Community Schools v. Seattle School District No. I* and *Meredith v. Jefferson County Board of Education.*

Actually, the suspense in the liberal camp was generated more by the hope that springs eternal than by a willingness to recognize that a majority of the current court is determined to strike down laws or policies intended to remedy past and continuing racial discrimination. Its weapon of choice is the legal standard of strict scrutiny. Initially developed by the court in the late 1930s to authorize closer monitoring of government policies challenged for denying equal protection and due process to members of minority groups, it has been restructured during the Rehnquist and Roberts courts to strike down affirmative-action programs.

In its new guise, the standard of strict scrutiny offers little support for black people seeking to challenge racially discriminatory practices that do not overtly mention race. But it enables any white person to challenge policies intended to remedy past discrimination, because those policies are typically

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couched in racial terms. Application of that standard dooms even modest programs to achieve racial diversity in school systems where neighborhood housing patterns are racially segregated.

The Seattle and Louisville decision places in jeopardy similar plans used by school districts across the country. Given the nation's racial history, it is hypocritical for Chief Justice John Roberts to assert that "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race." The suggestion cruelly conflates minor cures with major disease. Were he a medical doctor, Roberts would ban the use of vaccines fashioned from the disease-causing virus.

Undermining Integration

Writing the majority opinion, Roberts chose to ignore continuing resistance to school desegregation. Yet pandering to that resistance helped put those who appointed him in office. And it was precisely that resistance, in the decades following the landmark *Brown v. Board of Education of Topeka* decision, which ruled that public schools could not be separate but equal, that led courts to acknowledge that using racial-balance remedies to comply with *Brown* could not work—given the willingness of so many white people to leave integrated schools.

Stephen Breyer's dissent properly condemns the court for undermining the half-century-old promise of integrated primary and secondary schools proclaimed in *Brown*. His long and ringing dissent may become the elegy of the school-desegregation era.

Despite the majority's efforts to distinguish the public school case from the four-year-old decision in *Grutter v. Bollinger*, which narrowly approved some use of race at the college level, it is clear that, in the majority's view, all school assignments, however well intended, must be colorblind. It is not difficult to predict that, were it heard today, *Grutter* might well be decided differently.

We should not forget that *Grutter*, while hailed by its liberal supporters, was endangered from the start. Sandra Day O'Connor provided the swing vote by describing in her majority opinion the law school's admission process as a "highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment." In that process, she found, race counts as a factor, but is not used in a "mechanical way."

While O'Connor, heavily influenced by the multitude of amicus curiae ("friend of the court") briefs urging the value of racial diversity in corporate and military life, provided the fifth vote in the law-school case, her departure from her general opposition to affirmative-action

plans prompted strongly worded refutation by the four dissenters that very likely deterred university legal staff members from considering going forward with minority-recruitment-and-admission efforts.

Such efforts were discouraged further in Michigan last year when the state's voters approved a proposition barring affirmative action in public education, employment, or contracting. The proposal gained a 58-percent majority, but more significantly, almost two-thirds of white voters supported ending affirmative action, compared with only about one in seven black voters. Public opposition to affirmative action remains so strong that, had the court approved the voluntary plans in the current case, the anti-affirmative-action groups would probably have sought voter approval for barriers in Washington and Kentucky.

Continuing the Fight

Quite ready to "stay the course" against manifestations of public opposition, civil- rights groups see a basis for continuing the school-integration fight in Anthony Kennedy's concurring opinion. Kennedy suggested that, while the plans before the court were invalid, some future school-assignment policies might pass judicial muster by showing a compelling state interest for utilizing race as a component. Given the strength of judicial and popular opposition, Kennedy's observation is a slim reed on which to maintain the decades-long commitment to the vision of *Brown*.

The resilience of civil rights groups is praiseworthy, but future litigation, even if successful, is not going to alter the fact that most poor children, regardless of race, attend schools that are not meeting their educational needs. Their dire condition, and that of the schools they attend, is not solely the result of an insensitive Supreme Court majority ready to manipulate precedent to stifle well-intended racial-diversity plans.

The plain fact is that many white Americans, including many with otherwise liberal views on race, do not want their offspring attending schools with more than a token number of black and Latino children. Whatever their status, they do not wish to be burdened by efforts to correct the results of racial discrimination that they do not believe they caused. Their opposition may not be as violent or as vast as during the early years after the *Brown* decision, but it is widespread, deeply felt, and—if history is any indication—not likely to change soon.

We can acknowledge, even applaud, the many schools across the country where racially integrated student populations embody the goal that those of us who labored long years in the vineyards of school desegregation litigation hoped would be the norm at this point. ▶

It is painful for many of us, but it is time to acknowledge that racial integration as the primary vehicle for providing effective schooling for black and Latino children has run its course. Where it is working, or has a real chance to work, it should continue, but for the millions of black and Latino children living in areas that are as racially isolated in fact as they once were by law, it is time to look elsewhere.

Achieving Success

A growing number of public schools and after-school programs instill motivation in students by emphasizing developing pride and self-assurance and have proved successful. One, the Frederick Douglass Charter School in Harlem, NY, is considered one of the top public schools in the country, based on its course offerings and student performances on Advanced Placement examinations.

Over the last few years, its population has been more than 80 percent African American and more than 14 percent Hispanic. In terms of students' economic backgrounds, a vast majority are eligible for free lunch. Yet they manage to succeed.

Then there is the African American Academy, in Seattle, cited by Clarence Thomas as proof that black children do not need integration to learn. Thomas states the obvious to prove the impossible. The fact that black children can learn in all-black school settings does not mean that many could not learn in integrated settings. That said, the academy, 99 percent nonwhite, has in under two decades become a public school model. The gap in achievement with white schools is closing, a sign that the school is meeting a major challenge, since 85 percent of its students are eligible for free and reduced-price lunches. According to a report a few years ago, only 19 percent of students lived with both parents, the lowest rate in the district, and 40 percent live with relatives or foster parents.

After-school and supplementary programs including the All Stars Project and Building Educational Leaders for Life are only a few of the many achieving academic success for children whose educational outlooks are poor or nonexistent. Civil rights groups should recognize and support such schools and programs, not as a surrender of their integration goals, but as an acknowledgment that flexibility is needed in fulfilling the schooling needs of black and Latino children in today's conservative political landscape.

As to higher education, if the prognosis for maintaining race-conscious admissions programs is as grim as I believe, it too needs to consider supporting the kinds of school programs I have described. It cannot afford to stick its nose in the sand. Today's schoolchildren are tomorrow's college students. ed

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