

Question and Answer

QUESTION: I understand that to get the 9-0 vote in *Brown*, Earl Warren had to lead his court to make various compromises. Had he been willing to risk not getting a 9-0 vote, a more radical statement could have been issued. Did he make the right choice, or would it have been better to have won by 6-3 or even 5-4 and get a firmer, more uncompromising statement in the case?

JAMES PATTERSON: The most important compromise, of course, was to defer the decision as to how *Brown* was to be implemented for a whole year, and then use the unfortunate phrase, “with all deliberate speed.” But at the time, just about everybody who looked at that decision felt that unanimity or something very close to it was absolutely necessary given the state of the country. Historians must put themselves back into the context of the moment, and I think that was the context.

ROGER WILKINS: I am a 9-0 man. I hesitate to think what a Frankfurter concurrence would have looked like. I think Warren did the right thing. You have to remember that *Brown II* was written after the Justices had gotten a sense of Dwight Eisenhower’s reaction, and I suspect that their timidity was in part a result of that knowledge.

DOUGLAS REED: Unanimity was essential for any measure of success. I also think that in *Brown II* the Court underestimated some of its strengths. In Gerald Rosenberg’s defense, we should remember that the Court has very few tools at its disposal. Part of his argument is not that the Court could do nothing but that it lacked the ability to back itself up. I think that without unanimity, the decision would have gone nowhere.

Q: The problem was implementation, particularly, as Professor Wilkins said, because the Eisenhower administration didn’t do its job. But didn’t it also arise at the state and local level, where many of the school boards were made up of people who did not believe in integration?

JAMES PATTERSON: We’ve mentioned Buffalo versus Boston, which is an example of the enormous differences in the way local authorities reacted to the decision. Those differences make generalizations difficult. As my book details, there was really nasty opposition to the decision in

Milford, Delaware, and yet not far away in Baltimore the reception was much less oppositional.

DOUGLAS REED: We've got a different kind of segregation now than we did in the 1960s. Public school segregation then occurred primarily within a district, and all of the controversies over busing were internal district busing issues. With changes in housing patterns, we now have greater segregation across districts while the districts themselves are more homogeneous. That makes integration much more difficult, especially in wake of the Court's decision in Detroit which prevented cross district remedies.¹ It is the problem that Professor Wilkins is facing on the D.C. school board.

Q: In the *Brown* decision, the Supreme Court said that separate but equal is inherently unequal. Some people have said that was in itself a bit racist, implying that even if schools have the same type of facilities and funding, black children could not get an equal education unless they went to school with white children. Given the *de facto* situation in many inner cities, have most people dismissed the idea that there must be integrated schools in order to get quality education for all? If not, where are we with the *Brown* decision and its assumptions?

DOUGLAS REED: The NAACP has agreed to consent decrees in a number of cities across the south. Charlotte is ending its busing program. Other places have backed away from aggressive school desegregation programs. There have been busing orders in only two cities over the last twenty years and both of those are in Mississippi. The integration ideal clearly is dimmed.

Q: You described a roughly 500 batting average in the state courts. What accounts for the difference among them? Is it the provisions of the state constitution, the quality of the arguments, the composition of the courts?

DOUGLAS REED: The difference lies largely in the political ideology of the judges on each state's supreme court. One might argue that some states have a stronger commitment to public education. The state of Washington's constitution proclaims education to be "the paramount duty of the state," which is stronger language than most other constitutions.² There are better tools to work with in some places than others. But when you get down to it, the decisive factor is whether there are liberals or conservatives on the court. A lot of state supreme courts are elected, so they reflect the local political culture to a greater degree than the federal courts.

Q: Cambridge, Massachusetts has tried a system of socioeconomic integration. Do you think that's good or bad?

JUDITH WINSTON: That may be about the only alternative left to try, but I don't think it will be any easier to achieve socioeconomic integration than it has been to achieve racial integration.

DOUGLAS REED: It's a fallacy to use class as a proxy for race, because there are more poor whites than there are poor blacks. A system of class-based affirmative action will draw from a pool that is largely white, and will not generate the same kinds of numbers as one that emphasizes racial diversity. It will result in significantly different experiential diversities. There has been some discussion about the ways in which affirmative action programs have benefited primarily middle class and upper middle class African-Americans, while it is less clear that poor blacks have been the beneficiaries. Colleges and law schools that can enroll minority group members with high test scores are not necessarily going to seek out applicants from impoverished backgrounds with lesser attainments. Doing so, however, would result in greater experiential diversity.

JEFFREY HENIG: There are two kinds of arguments in favor of committing ourselves to achieving integration based on socioeconomic status instead of around race. One is that class is simply the more significant factor; the other, that it's more politically doable than dealing with race. There are lessons from housing policy that support that notion, including Section 8 housing, housing vouchers and local regulatory programs that require private developers to commit to including a certain percentage of units for below-market housing. Those frequently skate under the political radar screen more successfully than racially defined policies. In that sense, the political strategy has a certain compelling aspect to it.

Unfortunately, economic integration is easier against the background threat of racial integration. Many politicians and citizens will support economic balance if they suspect that the courts or others will insist on racial integration if they do nothing. If you take away that threat, you will find most of the same battles fought on the economic front.

DOUGLAS REED: I spoke earlier of higher education. Lacrosse, Wisconsin tried a lower school busing program based on socioeconomics and the superintendent was almost fired.

Q: One of the problems with education reform is that politicians are always thinking about the next election. Another is the socioeconomic background of the children in the schools. Can you address that?

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DOUGLAS REED: Some state departments of education have gone through a process of trying to define what their curricular components should be in order to achieve a particular level of education, recognizing that adequacy isn't measured in dollars but in the richness of the curricular offerings and the things children are required to learn in the classroom.

New Jersey tried that approach in its third or fourth response to the *Abbott v. Burke* litigation.³ Governor Christine Todd Whitman tried to focus the New Jersey system on a modular curriculum and talked about the price tag only after the state had defined the curricular components of a thorough and efficient education. I think that approach makes some sense. Although money is crucial, more dollars won't change too much unless they buy the right things. In short, *what* a state pays for is significant. Being able to buy a higher level of curricular offering, and the necessary resources and staff to go with that curriculum, makes a difference. The problem, though, is that the budget is decided on first and then one has to work backwards to determine the curricular offering. We can define a desirable set of education inputs and establish what we want everybody to learn, but pricing that out gets entangled with politics. If it becomes too expensive, the curricular offering is going to be cut back.

Socioeconomic background is of course important. The evidence indicates that the best predictor of children's test scores is the socioeconomic background and educational attainment of their parents. But educators have to deal with the fact that they have a limited institutional context in which to address very big and very difficult tasks. Schools have a particular mission, and it is not necessarily to be a welfare agency.

That said, it would nonetheless be possible to identify schools that are succeeding, in spite of the fact that the children in them come from impoverished backgrounds and have parents with low educational attainments and low educational expectations for their kids. That is the kind of thing the Education Trust is attempting to do. If we identify what is working in those schools, it may be possible to multiply the efforts. Equally, the important factor may be the unique abilities of a principal or a teacher; we don't yet know. But that's where the project might begin.

JEFFREY HENIG: One of the important legacies of the so-called Reagan Revolution is the successful creation of a national sense of lowered expectations about what government can do. There probably is a mobilizable constituency for spending more on educating low-income children if it results in quick and dramatic success. But our experience suggests that even if spending more does a lot of good, the result will not necessarily

show up quickly and dramatically in test scores. Absent that kind of quick demonstrable result, the political constituency is very fragile. Unless new legal standards are created as constitutional rights rather than statutory language, they are likely to erode in the face of higher costs for education.

I admit to vacillating about the question of the broader environment, wondering whether it makes sense to focus on the schools. On the one hand, it seems clear that we are ultimately not going to resolve a lot of these issues until we address broader economic inequalities. On the other hand, the schools constitute the public institution that has the greatest potential for breaking some of the cycles. The schools get children earlier than our other public institutions do, which may be why, historically, we have loaded so many expectations onto them. There is a limit to what we can expect them to do, however. In an environment of lowered expectations, that becomes very corrosive. The confidence of thirty or forty years ago that education will bring about upward mobility no longer exists, so we criticize the schools when they can't show that they've managed in short time periods to undo the damage that is the result of much longer time periods.

JUDITH WINSTON: We come back to Roger Wilkins' statement that we need to provide quality education to children of color. One of the remarkable phenomena meriting examination is that of black children growing up poor, going to public schools, and succeeding. We should also be urging the government to provide more in the way of support to historically black colleges and universities that, along with some courageous predominantly white schools, have turned people who grew up poor, as I did, into a black middle class.

School is the place where we have the best opportunity to create productive citizens in both social and economic terms. And we know how to do it. There's no longer any mystery about it. What we need is sustained commitment to doing it.

NOTES

1. *Milliken v. Bradley*, 418 U.S. 717 (1974). The lower courts had found that a Detroit-only plan could not eliminate segregation in the educational system, that it "would result in an all-black school system immediately surrounded by practically all-white suburban school systems, with an overwhelmingly white majority population in the total metropolitan area," and that "the only feasible desegregation plan involves the crossing of the boundary lines between the Detroit School District and adjacent or nearby school districts for the limited purpose of providing an effective desegregation plan." 484 F.2d 215 (CA6), at 245, 249. Chief

Justice Warren Burger held for a 5-4 majority that “absent any claim or finding that the boundary lines of any affected school district were established with the purpose of fostering racial segregation in public schools, absent any finding that the included districts committed acts which effected segregation within the other districts,” such a remedy was unwarranted by the Court’s holdings in *Brown* and subsequent decisions. 418 U.W. 717, at 722, 745. Justice Thurgood Marshall wrote in dissent, “The rights at issue in this case are too fundamental to be abridged on grounds as superficial as those relied on by the majority today. We deal here with the right of all of our children, whatever their race, to an equal start in life and to an equal opportunity to reach their full potential as citizens. Those children who have been denied that right in the past deserve better than to see fences thrown up to deny them that right in the future. Our Nation, I fear, will be ill-served by the Court’s refusal to remedy separate and unequal education, for unless our children begin to learn together, there is little hope that our people will ever learn to live together.” 418 U.S. 717, at 771, 783 (Marshall, J., dissenting).

2. Washington State Constitution, Art. 9, sec. 1.
3. *Abbott v. Burke*, 119 N.J. 287 (1990).