

Title: Swann v. Charlotte-Mecklenburg Board of Education

Source: *West's Encyclopedia of American Law*. Ed. Shirelle Phelps and Jeffrey Lehman. Vol. 9. 2nd ed. Detroit: Gale, 2005. p419-421.

Document Type: Case overview

Full Text: COPYRIGHT 2004 Gale, Cengage Learning

Page 419

SWANN V. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

During the 15 years that followed the Supreme Court's momentous **SCHOOL DESEGREGATION** decision in **BROWN V. BOARD OF EDUCATION**, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), school boards throughout the South did little to eliminate racial separation in the public schools. In some cases school boards merely announced a race-neutral school attendance policy. In other cases white-dominated school boards closed schools that were ripe for **INTEGRATION** and instead built new schools in suburban areas that would be virtually white-only. The **NAACP** and the federal government became increasingly frustrated by these methods and sought relief in the federal courts. As federal courts began to issue desegregation plans, questions arose over whether court-ordered supervision of local schools was proper. In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed.2d 554 (1971) (also known as *North Carolina State Board of Education v. Swann*, the Supreme Court issued another landmark decision, ruling that federal courts could exercise their remedial powers to end a dual school system divided by race. The Court made clear that when school boards refused to act in **GOOD FAITH**, the federal courts had broad discretion to order, implement, and oversee the desegregation of school systems. In addition, the Court endorsed the use of busing to ensure desegregation. *Swann* was a controversial decision that guided federal courts for almost 30 years. By the late 1990s, however, federal courts had ended oversight of school desegregation and busing began to lose favor.

The Charlotte-Mecklenburg school system included the city of Charlotte and the surrounding Mecklenburg County, North Carolina. The school district was very large, encompassing over 550 square miles of territory. During the 1968–1969 school year 84,000 pupils attended 107 schools in the district, with 71 percent of the students white and 29 percent black. Of the 24,000 black students, 21,000 attended schools within the city of Charlotte. Of that number, 14,000 black students attended 21 schools with were either completely black or more than 99 percent black. These statistics demonstrated that the racial **SEGREGATION** persisted 15 years after the *Brown* decision. James E. Swann and a number of other black parents filed suit in 1965, asking the federal court to mandate that the school system be desegregated. The school board responded by passing a plan based on geographic **ZONING** with a free-transfer provision. Swann and the other plaintiffs returned to courtPage 420 | [Top of Article](#) in 1968 and asked again for a plan that would dismantle the dual system and impose a unitary system upon the school district.

The district court conducted many hearings on the issues and found that the school district had drawn school attendance zones in such a way as to result in segregated education. The key issue, however, was how to remedy this situation. The school board proposed closing seven schools and restructuring attendance zones. The court found little merit in this proposal, finding that more than half the black and white students would remain in heavily segregated schools. The court appointed an expert, Dr. John Finger, to prepare another desegregation plan. The "Finger Plan" slightly modified the school board's plans for high school and junior high school students but was more drastic when it came to handling the 76 elementary schools in the system. This plan proposed using zoning, paring, and other grouping techniques so that student bodies in the school district would range from nine percent to 38 percent black. Black students in grades one through four would be bused from the inner city to predominantly white schools in the suburbs, while white students in the fifth and sixth grades would be bused to predominantly black schools in Charlotte. Under this plan, nine inner city schools were grouped with 24 suburban schools.

The Supreme Court, in a unanimous decision, upheld the desegregation plan and outlined what powers a federal court could employ to desegregate a public school system. Chief Justice **WARREN BURGER**, writing for the Court, noted that it had issued a second *Brown* decision in 1955 that addressed the need for school systems to move with "all deliberate speed" to end state-imposed segregated school systems. *Brown v. Board of Education*, 349 U.S. 249, 75 S. Ct. 753, 99 L. Ed. 1083 (1955). Despite the Court's desire that desegregation decisions be made by local school boards, it concluded that very little progress had been made when it issued its 1968 decision, *Green v. County School Board*, 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968). In *Green* the Court set out standards for measuring success in creating a unitary school system that no longer displayed the vestiges of segregation. The decision had made clear that school districts must take definite action to desegregate all aspects of public education or face court-imposed action. With *Swann*, Chief Justice Burger saw the opportunity to "make plain" and to "amplify guidelines" that would assist school districts and the lower federal courts.

The Court first stated that once a school district had been found in violation of the Fourteenth Amendment's **EQUAL PROTECTION CLAUSE**, a district court's "equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." Though judges could only employ these vast powers on the basis of a constitutional violation, once a violation had been established a court could fashion a remedy based on the scope of the violation. Chief Justice Burger rejected the school board's claim that Title IV of the **CIVIL RIGHTS ACT OF 1964** limited the federal courts' ability to implement the *Brown* decision. He concluded that the 1964 act restricted the courts from dealing with "de facto segregation," where racial imbalance in the schools had occurred without the discriminatory actions of state officials. The North Carolina schools had been segregated by state laws and therefore were subject to correction by the federal courts.

Chief Justice Burger addressed four main issues concerning student assignments to particular schools: (1) the use of racial balance or quotas; (2) the elimination of one-race schools; (3) limitations on attendance zones; and (4) the use of busing to correct state-enforced racial school segregation. As to the first issue, Burger emphasized that courts should not use a "fixed mathematical" ratio of white to black students for each school. A school district did not have the obligation to ensure that "every school in every community must always reflect the racial

composition of the school system as a whole." In the case of the Charlotte-Mecklenburg schools, however, the court-approved ratio of 71 percent to 29 percent was "no more than a starting point in the process of shaping of a remedy." The limited use of this ratio was within the discretion of the district court.

As to one-race schools, Chief Justice Burger found that these would require "close scrutiny to determine that school assignments are not part of state-enforced segregation." Moreover, where a school system has a history of segregation, the courts were warranted to presume that one-race schools had been created as a result of past or present discriminatory action. As to the altering of school attendance zones, the Court admitted that federal courts had employed "drastic" gerrymandering to ensure a mix of white and black students. Such actions were acceptable as "interimPage 421 | [Top of Article](#) corrective measure[s]" and were not "beyond the broad remedial powers of a court."

The use of busing to desegregate public schools was the most controversial remedy imposed by the federal courts. Chief Justice Burger noted that bus transportation had been an integral part of U.S. schools for years and that 39 percent of public school children had been bused during the 1969–1970 school year. The "normal" use of bus transportation, coupled with the finding that neighborhood school attendance zones would not dismantle the dual school system, led the Court to conclude that busing was an acceptable remedy. Burger pointed out that under the desegregation plan many students would actually have shorter bus rides. To rule out busing would doom desegregation.

The Court pointed out that the school system would someday be judged unitary and that the federal court would withdraw from its oversight of the system. At that point the school board would be free to consider how it wanted to draw its attendance zones. This happened in 1999 when the district court released the Charlotte-Mecklenburg district from its order. The school district then ended busing and returned to neighborhood attendance zones. Segregation of the school district also returned.

FURTHER READINGS

Kluger, Richard. 1976. *Simple Justice*. New York: Random House.

Orfield, Gary, Susan E. Eaton, and Elaine R. Jones. 1997. *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education*. New York: New Press.

Schwartz, Bernard. 1986. *Swann's Way: The School Busing Case and the Supreme Court*. New York: Oxford Univ. Press.

CROSS-REFERENCES

Civil Rights Acts ; Discrimination .

Source Citation

"Swann v. Charlotte-Mecklenburg Board of Education." *West's Encyclopedia of American Law*. Ed. Shirelle Phelps and Jeffrey Lehman. 2nd ed. Vol. 9. Detroit: Gale, 2005. 419-421. *Gale Virtual Reference Library*. Web. 24 Aug. 2010.

Document URL

<http://go.galegroup.com/ps/i.do?&id=GALE%7CCX3437704279&v=2.1&u=txshracd2543&it=r&p=GVRL&sw=w>

Gale Document Number: GALE|CX3437704279