

Brown v. Board of Education of Topeka / If You Were a Justice...

Directions: The *Brown v. Board of Education of Topeka (I)* decision did not dictate how schools should desegregate. Many systems did not want to desegregate and experimented with ways to get around the Court decision in *Brown* to take advantage of the vague mandate. Many lawsuits were filed by minority students, the NAACP, and the United States Department of Justice to force school districts to comply with the *Brown* decision. The law, however, was not always clear.

Read the following descriptions of school segregation cases¹ that came before the U.S. Supreme Court after the *Brown* decision. Taking into consideration what you know about the *Brown* case and the spirit in which it was written, how would you decide each one? After you discuss each case, read how the actual Supreme Court of the United States decided the case.

1. *Green v. County School Board of New Kent County (1968)*

States and counties adopted many different plans to desegregate their schools. In 1965, the New Kent County school board adopted a “freedom-of-choice plan,” which essentially allowed students in the rural, residentially-integrated district to choose which of the two schools they wished to attend—the formerly all-Black Watkins School or the formerly all-White New Kent School. After three years of the new plan, no White people had elected to attend Watkins and 115 Black people attended New Kent. The African American school children in this case contended that the “freedom-of-choice plan” in practice operated to perpetuate the racially dual (segregated) school system. It placed the burden of desegregation on the African American children’s shoulders.

If you were a Supreme Court justice, would you rule this “freedom-of-choice plan” constitutional?

The Court’s decision: In *Green*, the Supreme Court ruled that schools must dismantle segregated dual (or segregated) systems “root and branch” and that desegregation must be achieved with respect to facilities, staff, faculty, extracurricular activities, and transportation. Subsequently, courts used these “Green factors” as a guide in crafting desegregation plans.

¹ The cases in this activity are featured in the following book: Gary Orfield, Susan E. Eaton, and the Harvard School Project on School Desegregation, “Dismantling Desegregation: The Quiet Reversal of *Brown v. Board of Education*,” New York: The New Press, 1996.

More importantly, however, the factors have become a standard by which to determine whether school districts have achieved “unitary status” (fully integrated schools).

2. *Swann v. Charlotte-Mecklenberg Board of Education* (1971)

The school district in question was a part-urban, part-rural district covering 550 square miles and serving 84,000 pupils in 101 schools. The school population was 29% African American students and those pupils were concentrated in one quadrant of the city of Charlotte, NC. Even after the *Brown v. Board of Education of Topeka* decision, more than half of the district’s Black students attended schools without any White students or teachers. After the *Green* decision, the federal district court adopted a plan to scatter the highly concentrated African American student population by transporting students. The plan would involve 13,000 students and require 100 new buses at a cost of millions of dollars.

If you were a Supreme Court justice, would you order the desegregation of this school district through a busing system to disperse students?

The Court’s decision: This decision struck down “racially neutral” student assignment plans that produced segregation by relying on existing residential patterns in the South. In *Swann* the Court ruled that desegregation must be achieved in each of a district’s schools to the greatest possible extent and approved busing as way to accomplish this.

3. *Keyes v. School District No. 1, Denver, Colorado* (1973)

This was one of the first cases dealing with school segregation outside of the South. In this case, the lower courts found that the Denver School District deliberately engaged in discrimination in the Park Hill section of the district by building schools in certain areas, gerrymandering student attendance zones, and by the excessive use of mobile classroom units, among other things. The petitioners in the case not only wanted the Park Hill section of the city to be desegregated, but wanted the courts to order desegregation of all segregated schools in the city of Denver, particularly the heavily segregated schools in the core city area, even though there was no evidence of a deliberate attempt to segregate students in all-Black schools there.

If you were a Supreme Court justice, would you order the entire district desegregated or just the Park Hill area?

The Court's decision: This was the first ruling on school segregation in the North and West, where there were no explicit statutes requiring segregation in the past. Under *Keyes*, the Court found that school districts were responsible for policies that resulted in racial segregation in the school system, including constructing schools in racially isolated neighborhoods and gerrymandering attendance zones. Once intentional segregation was found on the part of the school board in a portion of the district, the whole district was presumed to be illegally segregated. The case also recognized Latino students' rights to desegregation, as well as that of African American students.

4. *Milliken v. Bradley* (1974)

This case concerned the segregation practices of the Detroit Public Schools district, which was the fifth largest in the nation in 1970. Several African American students and the NAACP filed the suit against the Detroit district alleging past and present discrimination, particularly in the drawing of school district and attendance zone boundaries. Lower courts found that there was discrimination and ordered the system to desegregate. Because of "White flight" to the suburbs, the Detroit Public Schools were largely attended by Black students, making it difficult to truly desegregate. A plan was devised to include surrounding majority White school districts in the desegregation plan, even though those districts had not engaged in any illegal segregation. This was believed necessary because without their participation there could not be a racial balance in Detroit's schools.

If you were a Supreme Court justice, would you approve the plan to desegregate multiple school districts even though only one school district had been found to have illegally discriminated?

The Court's decision: In this decision, the Supreme Court blocked efforts for inter-district, city-suburban desegregation remedies as a means to integrate racially isolated city schools. The Court prohibited such remedies unless plaintiffs could demonstrate that the suburbs or the state took actions that contributed to segregation in the city. Because proving suburban and state liability is often difficult, *Milliken* effectively shut off the option of drawing from heavily White suburbs in order to integrate city districts with very large non-White populations.