

WINTER 2008 • VOL. 7, NO. 2

Respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

High Court Divided on Voluntary Integration Plans

by Phyllis Raybin Emert

In June 2007, the U.S. Supreme Court changed its opinion on school integration in America for the first time since the landmark *Brown v. Board of Education* decision in 1954. In a split 5-4 decision the High Court ruled against two large public school districts in Seattle, Washington, and Louisville, Kentucky (which were combined into one case). In an effort to maintain racial diversity, each school district used race as a factor in deciding where students would attend school.

The Seattle case

Since the 1960s, the Seattle school board has attempted to integrate its area schools, using race-based transfer policies, mandatory busing, and creating new schools with racially mixed student populations. The schools were successfully integrated by the late 1980s. By the late 1990s, students were permitted to choose what school they wanted to attend, with every attempt made to give students their first or second choice. The district was successful with more than 90 percent of its student body.

If too many students listed the same choices, tie-breakers were used to determine who got the spot. The first tiebreaker depended on whether a student had a sibling at the school. The second tie-breaker was based on the racial composition of the school and the race of the student.

Dissatisfied parents formed a group called Parents Involved and brought suit against the school district alleging the use of race violated the equal protection clause of the Fourteenth Amendment and the 1964 Civil Rights Act. In his written opinion, Chief Justice Roberts described the case of a ninth grader whose mother wanted to enroll her son into a particular high school that had a special Biotechnology Career Academy. She believed the Academy would be helpful

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Choose Your Words Carefully or You Could Land in Hot Water

by Barbara Sheehan

When a high school freshman from Santa Rosa, CA, was disciplined for saying "That's so gay" in class, her parents sued, claiming the school violated their daughter's First Amendment right to free speech. This set in motion a legal battle that would last for more than three years and would call into question an expression that is used by kids every day.

A case summary

Rebekah Rice, the student at the center of the California case, says she was responding to some classmates who were teasing her about her Mormon religion when she made the controversial remark.

Rebekah says the students asked her if she had 10 moms. That's when she replied, "That's so gay."

What she really meant, she later explained, was, "That's so dumb, that's so silly"

Still, her teacher—who says she had warned her students against using racial, gender, or other slurs—gave Rebekah a referral. This is a written memorandum of a rule infraction signed by school staff and sent home to parents.

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This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

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for her son's attention deficit hyperactivity disorder and dyslexia. The boy was accepted to the program, but was denied assignment because of the racial tiebreaker.

The Louisville case

Despite the *Brown* decision, a student assignment plan based on geography, and an open-transfer policy, the Louisville schools were still segregated in the early 1970s. Although the school district's black to white ratio was nearly 50–50, most of the public schools were either totally black or totally white.

A federal district court ordered a desegregation decree in 1975 and the Louisville schools were absorbed into the Jefferson County school system. African-Americans now comprise 20 percent of the new district and the Court put

a new **desegregation** plan into effect, which

involved extensive busing, racial guidelines, and magnet schools. By 2000, Louisville eliminated segregation in its school system and the District Court dissolved the 1975 desegregation order.

Under the current plan in Jefferson County, all regular schools must have a black enrollment of 15 to 50 percent. Parents can submit an application for a first and second school choice for their kindergartner or first-grader. Without an application, the school district makes the assignment based on openings at the schools and racial guidelines. A student would not be assigned to a school if the assignment contributes to a racial imbalance. Once assigned, transfers to a different school may be requested.

A parent in the lawsuit wanted her kindergartner to be assigned to the school located a mile from the child's home. The class was already full and the boy was assigned to another school that was 10 miles away. The mother tried to transfer her son to another school closer to home. Space was available but the transfer was denied because of the racial guidelines.

The decision

Chief Justice John G. Roberts, joined by Justices Antonin Scalia, Clarence Thomas and

Samuel A. Alito Jr., delivered the opinion of the Court and wrote, "Classifying and assigning school children according to a binary conception of using race is an extreme approach in light of our precedents and our Nation's history of using race in public schools... The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."

Justice Stephen Breyer, joined by Justices John Paul Stevens, David Souter and Ruth Bader Ginsburg, wrote the **dissenting opinion** where he contended that the Court's decision in the case undermined the 1954 *Brown* decision. Justice Breyer wrote that the Seattle and Louisville "plans represent local efforts to bring about the kind of racially integrated education that *Brown v. Board of Education*... long ago promised — efforts that this Court has repeatedly required, permitted, and encouraged local authorities to undertake."

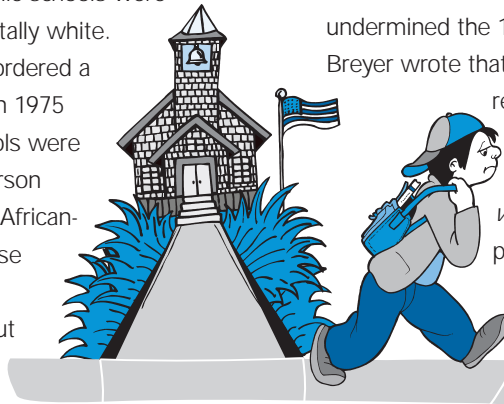
In a separate opinion, Justice Anthony Kennedy sided with Chief Justice Roberts, agreeing that the two school plans should not use racial classification to promote diversity. However, Justice Kennedy disagreed with the chief justice's opinion, which opposed *ever* using race as a factor.

Grutter v. Bollinger

In 2003, the U.S. Supreme Court in *Grutter v. Bollinger* upheld affirmative action policies at the University of Michigan Law School in a 5–4 decision. The Court allowed the university to consider race as one of many factors for acceptance to the law school because the school used a "holistic" approach, considering the entire candidate and not just his or her race. The Court also looked at diversity as a "compelling interest" to higher education in the *Grutter* case.

In his opinion, Chief Justice Roberts wrote, "The entire gist of the analysis in *Grutter* was that the admissions program at issue there focused on each applicant as an individual, and not simply as a member of a particular racial group... The point... was to ensure that the use of racial classifications was indeed part of a broader assessment of diversity, and not simply an effort to achieve racial balance, which the

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Holocaust Survivor Fights to Retrieve Paintings

by Cheryl Baisden

Dina Gottliebova Babbitt was a 19-year-old art student when she and her mother were ordered from their home and imprisoned in a Nazi concentration camp. The following year, along with more than 5,000 other Czechoslovakian Jews, they were transferred to the Auschwitz death camp in Poland. During the course of World War II, over 1.2 million Jews and 21,000 Gypsies would be put to death at Auschwitz as part of what is known as the Holocaust, in which six million Jews perished.

Living in deplorable conditions, with little food and even less hope, the young woman turned to her art to create a bright spot in the lives of the youngest prisoners, creating a mural of a mountain scene on the barrack's wall in the children's camp. Little did she know that the painting would save her life, and the life of her mother.

On a March day in 1944, when thousands of Auschwitz prisoners were being led to the gas chambers, the notorious Dr. Josef Mengele, who performed horrible medical experiments on Jewish and Gypsy prisoners, singled her out of the crowd and promised to let her live if she would paint portraits of Gypsy prisoners for him. Babbitt agreed, but only if he promised to spare her mother too.

Using a rickety wooden easel, she spent nearly two months painting watercolor portraits of 11 Gypsy men, women and children before the Nazis killed her models. Mengele then kept her busy painting scenes from his medical procedures until Babbitt and her mother were transported to another concentration camp. When the camps were liberated in May 1945, seven of the young artist's Gypsy watercolors left Auschwitz with surviving prisoners.

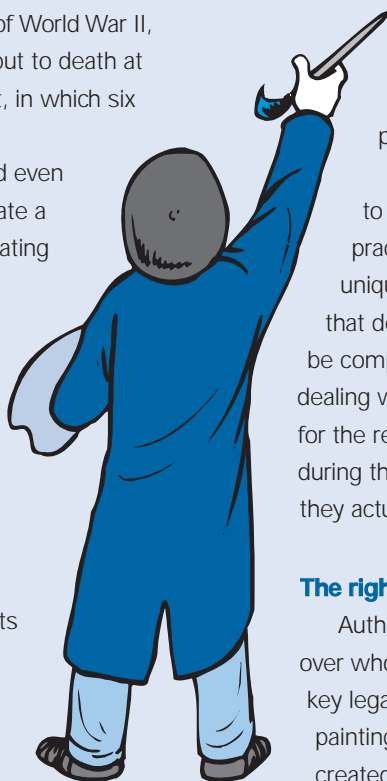
Nearly 30 years later, in 1973, the Auschwitz-Birkenau Memorial and Museum, which had been established on the grounds of the former camp in Poland, contacted Babbitt about her artworks. Charged with preserving the history of the Holocaust through its collection of Auschwitz items, the museum had purchased the seven paintings from two former camp prisoners. The museum discovered Babbitt's identity when the signature on her Gypsy paintings was matched to signatures on artwork she completed for a Holocaust book after the war. She promptly flew to Poland with a briefcase, anticipating bringing the watercolors home, but museum officials refused to release them.

"Every single thing, including our underwear, was taken from us," Babbitt said in an account of her wartime experience that appeared in *The New York Times*. "Everything we owned, ever. My dog, our furniture, our clothes. And now, finally, something is found that I created, that belongs to me. And they refuse to give it to me. This is why I feel the same helplessness as I did then."

At the age of 84, and in poor health, Babbitt continues to fight for the return of her paintings today. The battle between the artist and the museum has pitted U.S. officials, close to 1,000 lawyers and artists around the world, and even museum leaders from several countries, against the Auschwitz museum.

Although a formal lawsuit has never been filed by Babbitt, her struggle continues to attract public support.

The challenge with a case like Babbitt's, according to Steven M. Richman, a Princeton attorney who practices international commercial law, is that it's so unique that the only thing authorities seem to agree on is that determining the rightful owner of the paintings would be complicated. Other Holocaust-era property rights cases dealing with artwork involve victims, or their heirs, fighting for the return of art they *owned* that was taken by the Nazis during the war. This case involves someone fighting for art they actually *created* under Nazi rule.



The right of ownership

Authorities on both sides of the debate say the battle over who owns the Gypsy paintings centers around two key legal issues: property rights (who owns the physical paintings) and copyright law (the rights of the person who created the work). Babbitt believes that as the artist she is the owner of the paintings under copyright law, which generally gives ownership rights to the creator of a work. The museum argues the paintings were completed while she was part of the prison labor force at the concentration camp, and therefore it holds the property rights to them under what is known as the work-for-hire law.

Generally, under U.S. copyright law, if you do work as an employee, the copyrighted material is considered work for hire, and owned by the employer, unless there is a written agreement to the contrary, explains Richman. Where an independent contractor is involved, he or she generally owns the copyright unless there is an agreement to the contrary.

While the Auschwitz museum stands by its claim that the Gypsy paintings were completed as part of a work-for-hire arrangement, Babbitt points out that since she was identified as the artist, the museum has regularly contacted her for permission when the works are reproduced in publications or loaned to other museums, which implies that she *is* their rightful owner.

Unsuccessful compromises

In the 1990s, Rabbi Andrew Baker, a staff member of the American Jewish Committee and the Auschwitz Museum Advisory Committee, attempted to negotiate a settlement between the two sides, suggesting that Babbitt be granted [>continued on page 8](#)

Congress Considers New Law Aimed at Cracking Old Cases

by Barbara Sheehan

Fifty-three years ago, an African-American boy named Emmett Till boarded a train from his home in Chicago to visit his relatives in Money, Mississippi. Before he left, his mother cautioned him that discrimination in the south was much more harsh than what he was accustomed to up north; and she warned him to "mind his manners."

Sadly, this would be the last time she would see him alive. He was 14 years old.

Accounts of exactly what happened to Till while visiting his relatives vary. Many say that Till was leaving a local grocery store and whistled at the owner's wife, who was white. A few days later, Till was kidnapped in the middle of the night from his great-uncle's home, where he was staying. Three days after that, his body was found floating in a nearby river. Only his feet could be seen sticking out of the water. When he was pulled out, he had a bullet in his head and a 75-pound cotton gin tied around his neck with barbed wire. According to reports, Till had been beaten so badly that he could only be identified by the ring he wore, which belonged to his late father.

After Till's body was found, the grocery store owner and his half brother were charged with the murder. During the trial,

they pleaded innocent, and they were not convicted. Less than six months after being cleared of the crime, however, they sold their story to a reporter and confessed to everything.

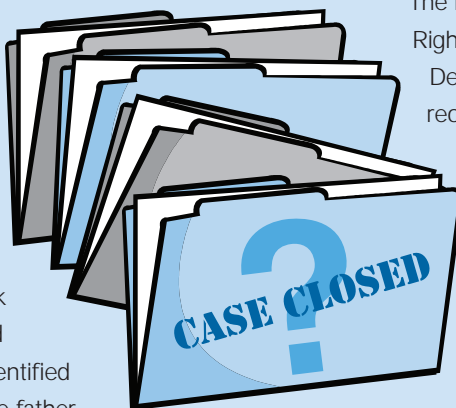
The public, after reading about the murders in *Look Magazine*, was so outraged that some say Till's murder helped ignite the start of the Civil Rights Movement. More than a half a century later, it has also inspired the introduction of a federal bill that would create funds to investigate unsolved civil rights crimes.

What is the Emmett Till bill?

The legislation, known as the Emmett Till Unsolved Civil Rights Crime Act of 2007, would give the U.S. Justice Department \$10 million annually over 10 years to reopen civil rights murder investigations that date back before 1970. It also would allow for \$3.5 million in grants to help other local law enforcement agencies.

While the killers in the case of Emmett Till confessed, there are many more civil rights cases like his that have never been solved. At a press conference that was held after obtaining a successful conviction in another 1964 cold case,

Assistant Attorney General Wan J. Kim stated that there are as many



Case Closed: Bringing Delayed Justice

The Southern Poverty Law Center (SPLC), located in Montgomery, Alabama, is a civil rights organization that, among other things, tracks hate groups. SPLC recently turned over files of its research in many civil rights era cold cases to the FBI, who is expected to launch investigations into several of these cases. SPLC called its list "The Forgotten."

Richard Cohen, president of SPLC, told National Public Radio (NPR) that the Center is often asked why it investigates these old cases. Why not let them lie and move on, the critics say? Cohen says, "pursuing justice is essential to help right the wrongs of the past."

Cohen also notes that not everyone will get justice in the end, but that is no reason not to pursue justice.

"We should continue to investigate all the cases we can," Cohen told NPR, "because the sweet justice we get in those few cases will have to serve in those many cases where they'll never get prosecution or a conviction."

Below are three examples of justice that was delayed but not denied.

Alabama church bombings

On the morning of Sept. 25, 1963, four young girls — Denise McNair, Cynthia Wesley, Carole Robertson, and Addie Mae Collins — who attended the 16th Street Baptist Church in Birmingham Alabama were killed in a church bombing. The loss

would be felt throughout the nation and would galvanize the Civil Rights movement.

A man named Robert Chambliss was subsequently charged for the bombing but was not convicted until 1977 when more evidence had been gathered. In 1985, he died in prison.

Two other men — Thomas Blanton and Bobby Frank Cherry — allegedly participated in the murders but were not convicted until the case was reopened in 2000. The FBI assisted in bringing charges against them. Both men were convicted by state juries of all four murders and were sentenced to life in prison.

'Mississippi Burning'

In the summer of 1964, three civil rights workers were killed in Philadelphia, Miss.,

as 100 cold cases from the civil rights era that could be investigated, 30 of them are in the state of Mississippi.

If the Emmett Till bill were passed, proponents say those cases could possibly be solved. Till's case, in fact, was re-opened in 2004 after rumors that additional people may have been involved in the crime. Till's body was exhumed in 2005 and a proper autopsy was performed, something that had not been done in 1955. A grand jury was empanelled in 2007, but did not pursue charges due to what they found to be a lack of credible new evidence.

Is it too late?

Given how much time has passed since many of the pre-Civil Rights murders took place, is there any real hope of solving their investigations now? And even if these old cases could be solved, wouldn't it make more sense to focus on crimes that are happening now?

Chatham criminal defense lawyer Alan Zegas concedes that the older a case is, the harder it is to solve. Witnesses' memories fade, people move, people die, people get ill, he says.

At the same time, Zegas points out that older cases can often be aided by new technology that simply wasn't around 20 or 30 years ago. Some highly sophisticated forensic devices today can detect DNA "down to a particle," Zegas notes. Not only can this evidence be

used to prosecute people, but it can also be used to exonerate people who may have been wrongly convicted, Zegas says.

Outside of forensics, Zegas says that sometimes, cracking an old case is simply a matter of having enough investigators to go out and interview people. There have been numerous cases over the years, Zegas says, where law enforcement has proven that it can still identify people who committed murders and successfully prosecute them (see sidebar below).

As for the logic of spending money on old cases, Zegas says it depends on the objective. If getting convictions is the only goal, then it probably doesn't make sense, he concedes. But continuing investigations of older crimes, which the Emmett Till bill would allow, sends an important message to murderers that the search for them will always go on, Zegas says, "and you can't put a value on that."

What's the status of the Emmett Till bill?

Last, summer, the Emmett Till bill passed in the U.S. House of Representatives with an overwhelming majority vote of 422–2. But it still needs to pass in the Senate to become law. At press time, an Oklahoma senator named Tom Coburn had single handedly stalled its progression for budgetary reasons.

In spite of this holdup, Zegas says he believes, that the bill will eventually get through the Senate and become law.

in an incident that would later be made into the movie *Mississippi Burning*. The victims were Andrew Goodman and Michael Schwerner, who were both Jewish and from New York, and James Chaney, a 21-year-old black man from Mississippi.

Three years later, 18 men, including a preacher and Ku Klux Klan organizer named Edgar Ray Killen, were brought to trial on federal conspiracy charges in connection with the killings. No state charges were filed at the time. Eight men were found guilty in the trial, however, the all-white jury was **deadlocked** in Killen's case and a mistrial was declared. None of the eight men who were found guilty served more than six years.

Years later, a journalist named Jerry Mitchell together with a teacher and several students developed new evidence in the murders and convinced the state of

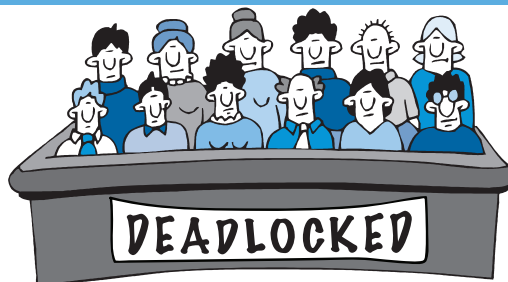
Mississippi to reopen its case against Killen. On Jan. 6, 2005, Killen was arrested on

three counts of murder. On June 23, 2005, Killen was found guilty of manslaughter and sentenced to 60 years in prison.

James Ford Seale

Most recently, in June 2007, reputed Ku Klux Klansman James Ford Seale was convicted on federal charges of kidnapping and conspiracy in the 1964 deaths of two Mississippi men — Charles Eddie Moore and Henry Hezekiah Dee.

Moore and Dee were both 19 years old when they disappeared in May 1964. Ironically, their bodies were found in the



Mississippi River during the search for the civil rights workers of the "Mississippi Burning" case.

Seale and another man, Charles Marcus Edwards,

were arrested for the crime, but local authorities threw out the charges. The Justice Department reopened the case in 2005 at the urging of Moore's brother, Thomas. Edwards was granted **immunity** in exchange for testifying against Seale. According to Edwards' testimony, Moore and Dee were kidnapped near Meadville, Mississippi, forced into the trunk of Seale's car and driven over the state line into Louisiana. Heavy weights were attached to the two young men, Edwards testified, and they were thrown into the river alive. Seale, now 71, was sentenced to life in prison. ■

—Barbara Sheehan

Choose Your Words Carefully or You Could Land in Hot Water *continued from page 1*

Rebekah's parents, in turn, sued, saying the school violated Rebekah's right to free speech and unfairly singled her out because of her Mormon religion. As a consequence of her referral for the 'That's so gay' remark, Rebekah's parents say she was teased, ridiculed, and harassed to the point where "her entire high school experience was ruined."

What did the court say?

In a decision last May, Sonoma County Superior Court Judge Elaine Rushing sympathized with Rebekah's "hurt feelings" but upheld the actions of the teacher and concluded that the school was acting within its discretion to issue the referral.

When it comes to disciplinary and other decisions, teachers, school boards, and administrators "must be accorded great deference," the judge stated.

As for charges that Rebekah had been unfairly targeted, the court found that a number of students had received the same treatment. Further, the court's decision noted that the referral Rebekah was given went into her "discipline" file, which went "nowhere," as opposed to her "cumulative" file, which could be forwarded, for example, to a college or university.

If the Rice family "had not told everyone that Rebekah had been given a referral for saying 'That's so gay,' then no one else would have known it either, and she would not have been referred to as the 'That's so gay girl,'" the court noted.

As for the teasing, the court expressed empathy.

"All of us have probably felt at some time that we were unfairly punished by a callous teacher, or picked on and teased by boorish and uncaring bullies," Judge Rushing wrote. "Unfortunately, this is part of what teenagers endure in becoming adults. And what is also clear to the court is that the law, with all its majesty and might, is simply too crude and imprecise an instrument to satisfactorily soothe deeply hurt feelings."

Laying the boundaries

At a time when schools all over are cracking down on bullying and discrimination, Rebekah Rice's case raises some interesting questions. Where are the boundaries on students' free speech? And how should remarks like "that's so gay" be handled by schools?

Metuchen attorney David Rubin, who represents school districts throughout New Jersey, says that as a general rule, students have a right to express themselves as long as their speech: 1) does not involve a threat of violence, or 2) is not likely to cause a substantial disruption in the orderly operation of the school.

Generally, a remark that is merely insensitive or rude does not qualify as prohibited speech under the law, Rubin noted. That is not to say that teachers should simply ignore it when a student says something hurtful or speaks out of line, Rubin said. A distinction

must be drawn, he said, between prohibiting or punishing student speech versus counseling.

Part of the mission of educators, according to Rubin, is to challenge students when they say something that is insensitive or offensive and encourage them to look at the consequences of their actions. Taking a student aside and having this type of discussion could be used as a teaching moment, he said.

Discrimination concerns

In New Jersey, schools may be especially sensitive to remarks like Rebekah Rice's since a landmark decision about bullying in the New Jersey Supreme Court last year. There, the court ruled that students suffering from harassment by their peers based on actual or perceived sexual orientation have the right to sue the school district under the state's Law Against Discrimination.

When considering whether a comment or action is truly discriminatory, one must consider the context, Rubin noted. In other words, is the derogatory speech or behavior being directed at a member of a "protected" category under the law, such as a gay or lesbian person? Or, is it simply an isolated insensitive remark?

If the answer to the first question is yes, and if the speech is persistent and substantial enough to create a hostile environment, then there might be legal grounds to pursue a discrimination case, Rubin noted. Otherwise, it would likely be addressed outside the court system.

'Gay? Fine by Me' is fine by the law

On the heels of the Rebekah Rice case, last September an incident arose in Ithaca, New York, concerning a gay rights T-shirt. In that case, a 16-year-old student was sent home from school by the principal for wearing a T-shirt that said, "Gay? Fine by Me."

According to an article in *The Ithaca Journal*, a lawyer for the school subsequently advised the principal that she had made a mistake sending the student home, and that the T-shirt was okay to wear.

"If it's simply a political statement, which I believe this was, according to the [U.S.] Supreme Court, so long as there wasn't disruption or violence, it's okay," attorney Jim Young told *The Ithaca Journal*.

What would not be permissible, Young noted, would be an outright anti-gay shirt or anything that insults a protected class. While the matter seemed to be settled, it generated considerable dialogue in the community. According to *The Ithaca Journal*, numerous fellow students and alumni from the Spencer-Van Etten High School, where the incident occurred, got behind the student by signing a petition condemning the principal's actions and wearing matching T-shirts in support.

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Court explained would be 'patently unconstitutional.' " He noted that in the Seattle and Louisville cases, race was the only factor considered, whereas in *Grutter*, it was one factor "weighed with others in reaching a decision."

In his dissent, Justice Breyer took a different view of *Grutter* and explained that race-based action must be reviewed in context. He wrote, "The Court's holding in *Grutter*... upheld an elite law school's race-conscious admissions program... Here, the context is one in which school districts seek to advance or to maintain racial integration in primary and secondary schools... The context here is one of racial limits that seek, not to keep the races apart, but to bring them together. ...Just as diversity in higher education was deemed compelling in *Grutter*, diversity in public primary and secondary schools, where there is even more to gain, must be... a compelling state interest."

The legacy of *Brown v. Board of Education*

In the Seattle and Louisville school district cases, the Court disagreed over the meaning of the landmark *Brown* decision. *Brown* held that "separate but equal" has no place in public education and is a violation of the Fourteenth Amendment. In addition, *Brown* also determined that separate educational facilities are "inherently unequal." Chief Justice Roberts wrote, "It was not the inequality of the facilities but the fact of legally separating children on the basis of race on which the Court relied to find a constitutional violation in 1954." The chief justice noted, "before *Brown*, schoolchildren were told where they could and could not go to school based on the color of their skin." He declared that assigning students to public schools should be completely non-racial, regardless of the situation.

Justice Clarence Thomas wrote a **concurring opinion** in support of Chief Justice Roberts, stating, "It is no answer to say that these cases can be distinguished from *Brown* because *Brown* involved invidious [offensive] racial classifications whereas the racial classifications here are benign [kindly]." He concluded by invoking the words of Justice John Marshall Harlan, who wrote the dissenting opinion in the 1896 case of *Plessy v. Ferguson*, which stated "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." Justice Thomas therefore concluded, "the race-based decision-making in the Seattle and Louisville school districts is unconstitutional."

Justice Stevens wrote a separate dissent addressing the *Brown* issue, stating, "There is a cruel irony in the Chief Justice's reliance on our decision in *Brown v. Board of Education*... The Chief Justice fails to note that it was only black schoolchildren who were... ordered [where they could and could not go to school]; indeed the history books do not tell stories of white children struggling to attend black

schools. In this and other ways, the Chief Justice rewrites the history of one of this Court's most important decisions." Justice Stevens concluded his dissent with, "It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today's decision."

While Justice Breyer admitted in his dissent, "The last half-century has witnessed great strides toward racial equality" He also wrote, "it is a cruel distortion of history to compare Topeka, Kansas, in the 1950s to Louisville and Seattle in the modern day — to equate the plight of Linda Brown (who was ordered to attend a Jim Crow school) to the circumstances of Joshua McDonald (whose request to transfer to a school closer to home was initially declined)... That cost does not approach, in degree or in kind, the terrible harms of slavery, the resulting caste system, and 80 years of legal racial segregation."

Justice Breyer noted in his dissent that the nation has not achieved what *Brown* promised. "To invalidate the plans under review is to threaten the promise of *Brown*... This is a decision that the Court and the Nation will come to regret," he wrote.



The Consequences

An editorial in *The New York Times*, published in June 2007, stated, "The Supreme Court ruled 53 years ago in *Brown v. Board of Education* that segregated education is inherently unequal and it ordered the nation's schools to integrate... Yesterday, the court switched sides. It was a sad day... for the ideal of racial equality... The nation is getting more diverse, but by many measures public schools are becoming more **segregated**. More than one in six black children now attend schools that are 99 to 100 percent minority..."

As a result of the Court's decision, **resegregation** will more likely occur in many school districts throughout the nation unless local boards can promote diversity without using race as a factor. In addition, it is likely that race-related court cases may significantly increase over time.

Jay W. Wegodsky, a New Brunswick employment attorney, said, "*Brown* has not outlived its purpose, nonetheless...it's a matter of determining what is the best policy or course when you are faced with constant budget constraints [in the school districts]." Wegodsky also noted, "There already is resegregation throughout this country... [and in New Jersey]. I witness it every day," he said. "We need to promote diversity through equal opportunities and having people in mixed neighborhoods instead of isolated pockets of development in areas that are clearly race-based neighborhoods."

Wegodsky believes that grass roots support is necessary to ensure diversity in New Jersey school districts. "Make school budget decisions that are not based purely on what one parent wants as opposed to another parent," he stated. "It's a matter of promoting diversity, through [the] means of making equal opportunity available." n

New Jersey gets 'A' for education

Leslie Farber, a Montclair attorney who chairs the New Jersey State Bar Association's Gay, Lesbian, Bisexual and Transgender Section, believes education is an important step in dealing with and perhaps preventing problems like those that arose in the Rebekah Rice case.

Based on the results of a 2004 nationwide study of statewide safe school policies by Gay, Lesbian, and Straight Education Network (GLSEN), New Jersey is in many ways leading that charge. According to GLSEN, New Jersey was ranked number one in its study and was one of only two states to receive a grade of "A" in the report. States were rated based on points given for six categories, such as statewide non-discrimination laws, support for education on sexual health and sexuality, and local safe schools policies. Forty-two states received an "F," according to the study.

Another report by GLSEN — the 2005 National School Climate Survey — found that 75 percent of students heard derogatory remarks such as "faggot" or "dyke" frequently or often at school, and nearly nine out of 10 (89 percent) reported hearing "that's so gay" or "you're so gay."

"As odd or funny as the phrase sounds," Eliza Byard, deputy executive director of GLSEN in New York, told *First Coast News*, "imagine what it feels like to be in a setting where you consistently hear it used to describe something undesirable or stupid, and it also refers to you."

Given the high percentages of the National School Climate Survey, it's clear that there is more to be done. For some students, like Rebekah Rice, the difference may come down to something as simple as the words they choose. ■

Holocaust Survivor Fights to Retrieve Paintings *continued from page 3<*

ownership of the paintings for her lifetime. Both sides turned down the proposal. In Dec. 2006, both sides refused to consider an arrangement that called for Babbitt to be given three of the paintings.

Babbitt wants ownership of all seven paintings, and envisions loaning them to a U.S. museum of her choice for exhibition. "I want my great-grandchildren to see them and say, 'This is what our great-grandmother made with her own hands. And this is why we are alive,'" she told *Time* magazine. "I wouldn't be alive if it hadn't been for those paintings, and my kids wouldn't be here. And they know that. This is something that belongs to our family more than anything else I can possibly think of."

The museum argues that Babbitt is not the only prisoner who created work at Auschwitz. There are a few thousand artifacts in the museum's collection, and about 2,000 were made by prisoners. According to a 2001 letter written by Przemyslaw Grudzinski, Poland's ambassador to the U.S., nearly every item in the museum collection could be claimed by someone as personal property if Babbitt is given



possession of the Gypsy paintings, which would lead to the closure of the museum.

"Everything which was created in Auschwitz ought forever to remain in this place," former museum director Jerzy Wroblewski said in a Jan. 2002 edition of the publication *Israel Faxx*. "Nowhere else will these works have the same impact on visitors as when they are seen on the grounds of the former camp. It is here that they shout the loudest."

But Babbitt and her supporters argue that the museum could replace original items returned to people with copies and still provide visitors with the same educational experience. And while she has yet to take legal action to reclaim her paintings, the Auschwitz museum is facing a legal battle that could begin chipping away at their collection just the same.

In 2005, Michael Levi-Leleu was visiting a French museum's Holocaust exhibit and spotted his father's name on a suitcase on temporary loan from Auschwitz. The following year he filed a lawsuit hoping to prevent the suitcase from being returned to Poland.

How this case will be resolved, and its impact on the museum's future, remains to be seen, according to Richman. ■

concurring opinion — a separate written opinion that supports the majority opinion. **deadlocked** — lack of progress due to opposing parties that refuse to cooperate. **desegregation** — the elimination of racial segregation. **dissenting opinion** — a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues. **immunity** — exemption from criminal prosecution or legal liability. **resegregation** — renewal of segregation, as in a school system, after a period of desegregation. **segregated** — separating people (or students) by race or social class.