

Tuesday, June 6, 1989

Supreme Court increases difficulty of proving racial bias in workplace

WASHINGTON (AP) — A sharply divided Supreme Court erected significant new barriers Monday for workers who try to prove with statistical evidence that they are victims of racial bias.

The 5-4 decision prompted bitter remarks from the dissenting justices who said the nation's highest court may be turning its back on America's history of racial discrimination.

"One wonders whether the (court) majority still believes that race discrimination — or, more accurately, race discrimination against non-whites — is a problem in our society, or even remembers that it ever was," said Justice Harry A. Blackmun in a dissenting opinion.

Justice John Paul Stevens, in a separate dissent, said the court is "turning a blind eye" to the Civil Rights Act of 1964 and its principles banning on-the-job discrimination.

"The changes the majority makes today, tipping the scales in favor of employers, are not faithful to those principles," Stevens said.

The court overturned a ruling that favored Filipinos, Alaska natives and Asians employed at Alaska salmon canneries.

The justices ordered further hearings with guidelines that will make it far more difficult for the minority groups to win their lawsuit.

Justice Byron R. White, writing for the court, said that when minorities use statistics to show they are bias victims, employers only must produce evidence that there is a legitimate reason

for apparently neutral business practices.

The burden of proving the practices are non-discriminatory — of persuading a jury there is no bias — does not shift to the employer, White said.

The worker "bears the burden of disproving an employer's assertion that the adverse employ-

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— Justice Harry A. Blackmun, U.S. Supreme Court

ment action or practice was based solely on a legitimate neutral consideration," he said.

He added that the workers must suggest alternative practices that do not have an unfair impact on minorities, but said employers cannot be forced to adopt the alternatives if they are more costly.

The court also limited the statistical evidence that minorities can use to prove discrimination.

He said the minority groups must show that any under-representation in skilled jobs is tied directly to specific business practices under attack.

White said that without such protection for employers their only recourse to eliminate racial imbalance in their work forces would be unlawful quotas.

The job-bias case involves discrimination charges against Wards Cove Packing Co. Inc. of Seattle, Wash., and Castle & Cooke Inc of Astoria, Ore.

Stevens said the racial stratification at the companies' canneries in remote areas of Alaska during the summer salmon run resembled a "plantation economy."

The racial minorities said that while they hold nearly half the jobs at the canneries, whites hold almost all the higher-paying positions such as machinists, carpenters and administrators.

Separate housing and eating places are maintained for the minorities.

The cannery companies said there are legitimate business reasons for the racial divisions.

White agreed that the proper comparison is between the racial composition of the skilled jobs and the racial composition of the qualified population in the relevant labor market.

White was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Antonin Scalia and Anthony M. Kennedy.

Pepper buried in city where his career began

TALLAHASSEE, Fla. (AP) — U.S. Rep. Claude Pepper, the beloved champion of the nation's elderly, was buried Monday in this city where he began his political career 60 years ago.

"Claude Pepper never forgot his duty as an elected official to fight for the common welfare," Senate Majority Leader George Mitchell, D-Maine, told about 1,000 mourners at First Baptist Church in the state capital.

"His energy and his vision will be sorely missed as the Congress now moves to take up Claude Pepper's last testament — legislation to provide long-term care for America's elderly," Mitchell said.

Pepper, known nationally as a fighter for the elderly and the poor during his 41 years in the Senate and the House of Representatives, died a week ago in Washington of stomach cancer. He was 88.

Members of Congress and top Florida officials were among those attending Monday's service just two blocks from the old Florida Capitol, where Pepper began his career of public service in 1929 as a member of the state House.

"He instinctively reached out to the underdog," said former Gov. Reubin Askew. "He was always willing to stand, many times when there weren't many people willing to stand up for other people."

Pepper was buried next to his wife, Mildred, in a family plot at Oakland Cemetery in Tallahassee. The epitaph he requested was brief and poignant: "He loved God and the people and sought to serve both."

Frank Pepper, the congressman's 71-year-old brother, thanked the governor. "I didn't know a heart could be so full of gratitude," Pepper said.

On Sunday, Pepper lay in state in the rotunda of the Capitol after a memorial service earlier in the day in Miami.

Pepper, elected to the U.S. Senate in 1936, served there 14 years until he lost a bitter primary race during which he was dubbed "Red" Pepper because of liberal views and alleged "softness" on Stalinist Russia.

Court: Topeka schools haven't complied with *Brown* decision

DENVER (AP) — The school board in Topeka, Kan., has failed to carry out fully the mandate of the landmark 1954 *Brown vs. Topeka* Board of Education desegregation ruling, a federal appeals court ruled in keeping the case open.

In an opinion published Friday but not made available until Monday, the 10th U.S. Circuit Court of Appeals reversed an October 1986 ruling that could have closed the case that paved the way for nationwide school desegregation.

"We are convinced that Topeka has not sufficiently countered the effects of both the momentum of its pre-*Brown* segregation and its subsequent segregative acts in

the 1960s," the appeals court said. The panel also reversed a lower court ruling that the Topeka school district had not violated Title VI of the Civil Rights Act of 1964.

"We won," said Rich Jones, an attorney for the group of parents of 17 children that reopened the *Brown* case in 1979. "We feel vindicated by the decision."

Included in the group was Linda Brown Buckner, whose maiden name provided the title for the landmark 1954 ruling.

The court noted that neither the Topeka school district nor the Topeka community are actively resisting desegregation and cited the national recognition of the dis-

tributed at concerns other than desegregation, however," the appeals court said, adding that "for the most part, the Topeka school district has exercised a form of benign neglect."

"The duty imposed by the Constitution, and articulated in numerous cases by the highest court in this land, requires more," the appeals court said.

The court sent the case back to the Kansas U.S. District Court, saying that Judge Richard Rogers of Topeka erred in requiring the plaintiffs to prove intentional discriminatory conduct.

"We are convinced that defendants (the Topeka school board) failed to meet their

burden of proving that the effects of this past intentional discrimination have been dissipated," the court said.

The case springs from the 1954 landmark U.S. Supreme Court ruling on a class action lawsuit filed by black Topeka residents against the school district. The lawsuit challenged the constitutionality of a Kansas law authorizing school segregation.

Topeka School Board Chairman Curtis Hartenberger said the board's attorneys were reviewing the decision.

"I have been told the findings relate primarily to student, faculty and staff assignment."


"We are convinced that the defendants (the Topeka school board) failed to meet their burden of proving that the effects of this past intentional discrimination have been dissipated."

— Appeals Court

THE BATTALION

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2nd Row (L-R): Mike Ricke (Baseball Trainer), David Weir (Trainer), Scott Daniels, Randy Pryor, Jeff Jones, Anthony DeLaCruz, Keith Langston, Jason Marshall, Travis Williams, Steve Hughes, Dewayne Grimes (Manager), Donovan Triplett (Manager).

3rd Row (L-R): Bill Hickey (Asst. Coach), Mark Johnson (Head Coach), Trey Witte, Mike Easley, Deron Dacus, Chris Finley, Blake Pyle, Brent Gilbert, Jeff Bernet, Eric Albright, Steve Smith (Grad. Asst. Coach), Jim Lawler (Pitching Coach).

Top Row (L-R): Jeff Johnson, Matthew Langford, Pat Sweet, Sean Lawrence, Rod Huffman, Scott Centala, Kerry Freudenberg, Tim Herrmann, Jim Neumann, Steve Johnson (Grad. Asst. Coach), John Wuycheck.