

By Bayard Rustin A. Phillip Randolph Institute

Supreme Court Not Favorable To Civil Rights

The era that began with the 1954 **Brown** decision, which declared segregated schools unconstitutional, has ended. No longer can the civil rights movement count on favorable decisions from the Supreme Court. Transformed by the appointments made by Richard Nixon, the court, under Chief Justice Warren Burger, has established a new trend that breaks sharply with its earlier course when it led the nation in fighting racial discrimination.

For some time the court has been handing down rulings that some experts believe would have made it difficult, if not impossible, to win many of the landmark civil rights cases of the 1950s and 1960s.

Though the rulings have often been procedural or technical and have even come in some cases which had nothing to do with racial or sexual discrimination, their implications are deeply disturbing to civil rights activists. What the court has done is threefold.

First, it has made it harder to bring suits on behalf of a class composed of all others in a similar situation -- a technique that is frequently necessary to remedy civil rights violations.

Second, those who get into court may find that they don't have a legitimate claim of discrimination. The Burger court has given a narrow interpretation to federal civil rights laws and the Constitu-

tion's guarantees of equal protection.

Finally, the court is now stressing the need for proof that there was an actual discriminatory "intent" or "purpose" as opposed to clear proof of discriminatory "impact."

In January, the Court applied the "intent" ruling to a case challenging exclusionary suburban zoning. The court said that it was not inherently unconstitutional to refuse to change zoning regulations whose real effect is to block racially integrated housing.

According to the court's reasoning, for such discrimination to be unconstitutional, there would have to be proof of intention to discriminate. Regardless of the motives in this particular case, there can be no doubt that many suburbs have deliberately manipulated zoning regulations to keep blacks out. They have not been encouraged to believe that it is safe to

continue discriminatory zoning because it will be difficult, if not impossible, to prove an intention to discriminate. The court decision has created additional barriers for those who are working to achieve racially integrated housing patterns.

As the zoning decision indicates, it is becoming increasingly improbable that new and significant civil rights victories can be won in the courts. Indeed, where court decisions make a difference to racial progress they are more likely to have a negative impact. The great judicial and legislative victories of the 1950s and 1960s will not be overturned, but new court decisions are likely to protect existing patterns of inequality and privilege.

The question is no longer whether litigation or political action offers the best avenue to progress for black Americans. Rather it is how the black community and others committed to a just society will

react to a new and troubling situation.

Will defeats or lack of progress in the legal sphere lead to political defeatism, apathy, and despair? Or will a clear political strategy, as sophisticated as the legal strategies that won the great victories in the courts, be able to bring renewed vitality to the civil rights movement?

The adverse turn taken by the Supreme Court does not mean that racial progress must come to an end. For a long time, the important victories of the civil rights movement have not been dependent upon judicial decisions. The civil rights legislation of the sixties was a political victory, as was the economic progress that resulted from the Great Society programs.

Although the legal protection of rights remains essential, the most important needs of blacks today cannot

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Black Empowerment

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see that "Black Journal" is given sustained prime time showing. Further, every effort should be made to increase such offerings as "Black Journal" which are in the manifest interest of all Americans.

The unprecedented -- or all time record-shattering -- success of "Roots" suggests no inconsiderable interest in a corrective re-drawing of all black-white realities portrayed almost entirely in mythological

and ever destructive ways for the nation's wholesome image of itself.

Indeed, the F.C.C. (together with the White House) and PBS have a major and pressing responsibility to correct all of the false formative images of America provided to our white and black youngsters daily on re-runs of old films which both omit and demean black Americans and other American minorities.

Either the re-runs should be halted forthwith. Or major substantial efforts must be made for the production and showing of new films affording a positive and corrective view of what we as an American people are... and more important, may yet become.

* * *

If public broadcasting is to justify its continued existence, several points become compellingly clear from what has emerged through the "Black experience"

1. Public television broadcasting should not be an end in itself. It must be, or become, a catalyst to the medium as a whole. In order to accomplish this, it must set the highest standards for itself and show how new and better services to the public may be achieved.

2. Public broadcasting, consequently, can never become a "waste basket" for the unwanted items on commercial television. It must become rather "the nursery basket",

bringing to the fullest and most compelling life new means for the greatest possible public service by the entire television industry.

3. Far more public and private industry monies are needed. So far as "Black Journal" is concerned, it cannot hope to speak for all the urgent items about black Americans which may enrich white and black Americans alike in an infinite variety of ways.

In this sense, "Black Journal" should have enabling production resources either to move on to commercial television or to prepare "spin off" productions for the commercial media.

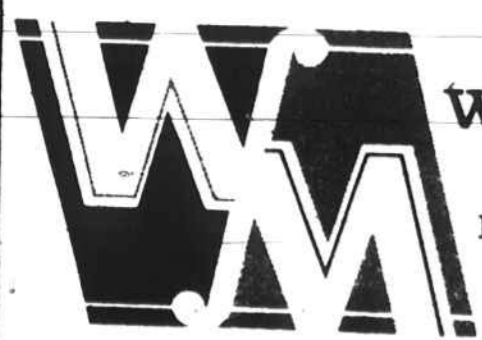
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4. Both private industry and the federal government must see that Public Broadcasting is an arm or mechanism for the achievement of equity throughout our nation's life.

PBS must begin with itself, where blacks -- and other minorities -- at all levels should be afforded temporarily disproportionate empowering opportunities at all levels. This is in fact, the only means toward equity.

The leadership at Pepsi-Cola, knowing this, has a leadership responsibility in such matters.

In this sense, we must salute "Pepsi" as an old friend, who has come through gallantly on "Black Journal", and upon whom we must even more greatly rely for far more urgent tasks ahead.



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