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N.Y.'s Backward High Court

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By Lewis M. Steel

Throughout the 1980's, the New York Court of Appeals, the state's highest court, rendered decisions in housing, education and employment that have set back the increasingly difficult struggle of minorities to achieve equality.

These decisions have upheld barriers to vitally needed low-cost apartment housing in white residential areas; approved the gross underfinancing of largely minority urban public school districts and relieved businesses of much of their duty to insure that employees do not engage in racial harassment on the job.

Each decision contributed to the growing perception among minorities that dominant white institutions have no interest in breaking down the barriers that lock minority communities in poverty and subject them to the indignities of inferior status.

Consider the 1987 Suffolk Housing Services v. Brookhaven decision. The court allowed a town to use its zoning laws to exclude low-income housing from its white neighborhoods.

Chief Judge Sol Wachtler, who wrote the opinion, paid lip service to the concept that zoning laws should not be used to exclude low-income and minority people from living in decent surroundings. But he ruled that exclusionary zoning can be challenged only by a landowner seeking to develop a particular parcel.

This limitation virtually immunizes exclusionary zoning because no profit-minded owner would engage in a long challenge to a zoning decision while his land lies in limbo. Every suburb now knows it can safely use its zoning ordinances to keep nonwhites and poor people out of middle-class neighborhoods.

Housing, education, job decisions hurt minorities.

By contrast, the New Jersey Supreme Court not only struck down similar exclusionary zoning devices but ordered affluent white townships to seek out low- and moderate-income housing.

Public education for minority and poor children fared no better in Levittown Union Free School District v. Nyquist, commenced by 27 property-poor school districts and later joined by the boards of education of New York City, Rochester, Syracuse and Buffalo. These boards argued that minority and poor children could not possibly receive equal educational opportunities under the state's system of relying heavily on local taxation to finance public schools.

The court in 1982 threw out lower court decisions in favor of equalization, holding that public education should not be considered a fundamental constitutional right under New York's Constitution.

By contrast, the Supreme Court of Kentucky ruled in 1989 that the widespread disparities between rich and poor school districts were unconstitutional and that the Legislature had to insure that educational spending was uniform throughout the system.

The New York court has also set back the struggle of minorities for dignified treatment in public places and on the job.

Historically, employers have been responsible for the misdeeds of their employees. A taxicab owner, for example, is responsible to a passenger injured by a driver's negligence. Not so with regard to a passenger injured by a driver's racial harassment, the court ruled in 1985, in Totem Taxi v. Human Rights Appeal Board.

New York's appellate courts, with Court of Appeals approval, have extended this restrictive approach to protect employers from their own employees who allege racial harassment by supervisors.

As a result, employers in New York are responsible for racial slurs only if top management condones the conduct. Employers thus have little economic stake in seeing that racial insults do not occur on the job.

The court has not only limited minority access to the judicial system but to the streets as well. A 1985 ruling involving an antinuclear demonstration denied constitutional protection to peaceful demonstrators seeking to distribute handbills at a large privately owned shopping mall.

The majority ignored Chief Judge Wachtler's argument that suburban shopping malls have replaced downtown business districts as public centers. Because minorities often rely on demonstrations to publicize their claims, this decision often removes this most powerful lawful weapon from their limited arsenal.

By leaving in place festering injustices, the court has become a contributor to the rising level of minority anger and alienation from white-dominated institutions.

Lewis M. Steel is a lawyer who specializes in civil rights.