

#88 The Right to Read

Jennifer Berkshire Welcome to Have You Heard, I'm Jennifer Berkshire.

Jack Schneider And I'm Jack Schneider

Berkshire And Jack in the midst of what seems like just an unbelievable and unbelievably bad news period. There was actually a glimmer of bright news the other day. Do you know what I'm referring to?

Schneider I think I do. If you blinked, you would have missed it. But there was an important court case that was decided that, uh, found that surprise, lo and behold there is a constitutionally guaranteed right to an education for all young people.

Detroit students In 2016, our schools in Detroit were crumbling. Our test scores were the lowest in the country. We didn't have any certified teachers and most of us had to learn without data, textbooks and supplies on top of it. Because of the laws the state put in place, charter and district schools were competing for student enrollment, causing more harm and chaos

With the help of the Public Counsel law firm, students sued the state saying they're responsible for the poor education conditions since you control district schools and statewide charter policies for the past 20 years. The lawsuit said that the state denied many Detroit children like me, the right to read because of these conditions.

Berkshire You just heard from two Detroit students talking about a landmark federal appeals court decision in the case known as Gary B vs. Whitmer. The court ruled that the students have a federal fundamental right to education. We'll be getting to what that does and doesn't mean in a bit. But first Jack, it seems like a big part of the excitement about this decision is that it interrupts a decades long trend of bad news on the kids vs court front. I want to put you on the spot and ask you to give us a brisk overview.

Schneider I think the briskest overview would be the story of the second half of the 20th century, beginning with the Brown case, 1954 and the second Brown decision, which actually required that schools desegregate with all deliberate speed. We saw steady progress until the Milliken case Milliken versus Bradley, which was ironically given that we're talking about Detroit right now, decided about Detroit public schools. The court decided that, uh, you could not force the surrounding predominantly white suburbs to engage in a busing program with Detroit to create racial balance that they had to be treated separately and autonomously.

And really what we see is a history of the court really trying to pull itself out of being involved in education. And it's led to some decisions that have left people kind of shaking their heads. One that is particularly relevant for this case is San Antonio Independent School District versus Rodriguez.

That was a 1973 case where the court found that the constitution does not protect a right to education. There were massive disparities in funding in the school districts that they were looking at and the court essentially washed its hands at that point of any responsibility for determining what was owed to young people in America schools.

Berkshire Well, Jack, I want to compliment you. I think that was quite brisk.

Schneider You didn't say it was good.

Berkshire Okay. So Jack, now it's time for us to move onto the present and the decision that was just handed down, and I will admit I found working on this episode really humbling. The case is complicated. I kept getting things wrong in just trying to explain like what could happen next and the various torturous turns of the case. I had to keep going back and correcting things and so I've decided that I'm going to outsource the job of describing the decision and how we got there to you. Take it away.

Schneider So I think that we can really distill this down to three main points. So this was an appellate court trying to decide whether or not this case should go to trial. There were three arguments that the state was making to the appellate court for why this case should not go to trial. They were arguing it should just be thrown out. The first was the state wanted the court to dismiss the case because there's no state policy or action that was discriminatory here. The state admitted, yes, the conditions of Detroit schools are not good and the court agreed, but the state said, that's not our fault. We did not create these unequal facilities, curricula teaching staffs. There was no particular state action that led to those inequities. And again, the court agreed. The second point that the state was making in terms of trying to get this case thrown out was that compulsory attendance is not equivalent to unlawful detention.

This was actually a very clever argument by the plaintiffs, I think where the plaintiffs were arguing that Michigan's compulsory attendance laws, which are in keeping with compulsory attendance laws in all 50 states were detaining young people in places that were schools in name alone. And I think that's a really smart argument. But the court ruled that the plaintiffs had failed to provide adequate evidence of this and they said the case can't move forward on that either. So you're zero for two so far.

The state then went to its strongest point for throwing out the case, and said there's no right to an education. This is not a constitutional right. And that's been determined previously. That should have been strike three for Gary B. But this is where we see the big surprise. So the plaintiffs contended that access to literacy as opposed to other educational achievements is a gateway milestone that unlocks other fundamental rights. And surprisingly the court agreed. The court ruled, 'we recognize that the constitution provides a fundamental right to a basic minimum education.' So this is actually a really big deal.

And let me just belabor the point for another 30 seconds and talk about how the court reasoned through that. So the due process clause of the 14th amendment and the 14th amendment is equal protection of the laws. The due process clause says that no state can deprive any person of life, liberty, or property without due process of law. And that clause is mostly interpreted as a defense of procedural protections whenever the state tries to seize someone's property or freedom. But the clause has also been read to recognize that certain interests are so substantial that no process is enough to allow the government to restrict them. And so this is a real milestone since the courts have never wanted to get involved in questions of what a guaranteed education might look like. That's for the legislature to decide, they've argued. This would be a big change.

Berkshire Very nicely done, Jack, and you've also I think captured one of the things that's so complicated about this case. On the one hand we're dealing with these big sweeping questions about a constitutional right to education and on the other hand the case is all about the specifics of education policy in Michigan. The state essentially ran the Detroit schools for close to two decades. And during that time Detroit became a hotbed for charter school expansion, for a controversial turnaround experiment, and it was the only place in the state where non-licensed teachers could teach.

Schneider That was one of the things that really jumped out at me as well, Jennifer, I also read the case and one of the arguments was that the state oversees an inequitable system and therefore is responsible for this. And the court said, well, actually there isn't a particular state policy or action that was discriminatory. And so they weren't buying that argument. And yet that's one example of the state adopting legislation that turned out to promote inequity. So the court found that, yes, in 2016 this legislation permitted uncertified instructors to teach in the Detroit public schools had a detrimental impact on students.

Berkshire Well I had a chance to speak with a former Detroit teacher about this issue of unlicensed teachers - or non-certificated teachers as they're referred to in the case. I'll let her introduce herself.

Stephanie Griffin So I am now Dr. Stephanie Griffin. I have been in education since 2004. That makes me about a 16 year veteran or a 17 school year veteran depending on how you look at that. I've had the roles of English teacher, a master teacher, assistant principal, a curriculum director. I've heard a variety of titles. The bulk of my work here has been within the city of Detroit, whether it was working for the traditional public schools in Detroit or if it was the Education Achievement Authority, which is no longer or various charter schools. So the bulk of my experience has been working within the city of Detroit, educating students there.

Berkshire Stephanie worked for the state-run turnaround district known as the Education Achievement Authority or EAA from 2013-2015. It was an education experiment mired in controversy pretty much from its inception.

Griffin It was like building the airplane while you're flying it except for the directions were coming from someone who knew how to build a bike and not build an airplane. So you just had children on the computer a lot of the time. And then the teachers acted as facilitators. They did not want whole group instruction at all. In fact, you would be marked down on your teacher evaluation if you did more than like 10 to 15 minutes of instruction. They wanted to see centers where kids had independent choice to choose to do the work or not choose to do the work and to move at their own pace. But counterintuitively, you were supposed to make sure you were in charge of making sure that the students were participating in all of the centers. So it was just a lot of contradictory language. Nothing was, you know, really in my opinion, well thought out. Of course. I don't know what type of sweat hours went into the creation of the district, but from a person who worked in the district and who was a veteran educator, nothing seemed to be well thought out. There were ideas, there was no shortage of ideas, but there was a complete shortage of taking the idea from its inception to implementation. That's where it was lost. And so that's my reason for saying that the children were experimented with educationally.

Berkshire Now the official rationale for allowing unlicensed teachers to teach in Detroit - something that was prohibited in every other part of the state - was that the Motor City had a severe teaching shortage. But Stephanie says there was also politics at work.

Griffin They don't know how a school works, how a district works or what should be in place. So when you're rolling out ideas that might seem wacky to a veteran educator, you're not going to get that pushback from a new person with no real understanding of how this whole education thing works. Anything will sound good to them because they're novice. So I think that this was a plan just to get the, the older, more seasoned, more knowledgeable employees out of the district and replace them with more unseasoned, less knowledgeable, moldable individuals who might not realize that you're making divisive or destructive choices for both the students and your staff until this five or six years later. But then those things are already rolled out, so it's water under the bridge.

Berkshire So Jack, listening to Stephanie talk about the Education Achievement Authority or the EAA, which is really now in sort of the dustbin of reform efforts. I was reminded of an episode that we did with historian Noliwe Rooks. Do you remember that episode?

Schneider I remember all of our episodes, Jennifer and I listened to them while I sleep to remain fresh.

Berkshire Sleep and this show do not go together. So this case really made me think back to our conversation with Noliwe Rooks about her fantastic book Cutting School. She introduced us to this concept of what she called 'segrenomics' - this sort of long-running effort to quote unquote "fix" the schools attended by poor Black and Brown students. And as she points out, the solutions always involve something just like Stephanie was describing: an ed tech platform, non-certified teachers, privatization. And she calls it segrenomics to reflect that as a country we

gave up on integration and that what you see instead are these sorts of educational experiments involving kids like those in Detroit and always paying off for somebody.

Schneider Yeah. One of the things that we have talked about on this show is a kind of historical shift that took place in the latter part of the second half of the 20th century. So in the first part of the second half of the 20th century, we saw a move towards redistribution, and a real acknowledgement that the aim of equity was going to require some discomfort. So busing as an example in the latter part of the second half of the 20th century, what we saw was a real move away from that and towards this belief that we promote equity in a way that wouldn't require a sacrifice from anybody, that essentially the privileged would be able to maintain their privilege and that we would simply find creative ways of lifting everybody else up. And this has turned out to be far more problematic in practice than in theory.

Berkshire Well, Jack, when I was thinking about Noliwe Rooks and wondering about her reaction to this latest case, do you know what I decided to do?

Schneider I am beyond even being able to guess what you have decided to do without checking with me, Jennifer. It's okay. Whatever it is I'm on board.

Berkshire I called her.

Schneider Oh, well that's, that's, that's, that's outrageous. You're supposed to, you're supposed to text or Zoom. Calling is out!

Berkshire Well as it happens Noliwe Rooks had lots of thoughts about the recent Appeals Court ruling. And Rooks says that while the decision may have been a surprise, the movement behind it has been building for a while.

Noliwe Rooks What you're seeing is a grassroots, smart, savvy, pushback, organized resistance fueled by a belief that schools do more than just teach, that they're important, that they're a shared resource and a cultural resource worth fighting for. What I love about this is to see that bottom up fight for this, this thing that we all, we all believe to be a fundamental right but the law does not. And to base it on what the least of these need and not, you know, anybody else.

So in order of importance, love that, love it and love that they stayed in there and kept swinging. Love that it's Betsy DeVos' state that they rose up to say this in. And I can only imagine everything they've had to overcome politically to get to this point in that state. Love it.

Berkshire So if you read Rooks' book Cutting School - which you absolutely need to - you know that what she's so good at is excavating history in a way that makes the present look different. And as she read the Detroit case she was reminded of grassroots activism around education in the 1940's and 50s. Rooks points to Harry Moore - an African-American teacher and civil rights

activist who was murdered along with his wife - also a teacher - by white supremacists in Florida on Christmas night in 1951. Moore talked about citizenship in a way that animates the Detroit case and another right-to-education lawsuit filed against the state of Rhode Island.

Rooks But he had this term that he wanted black people to have a more robust citizenship. What he was arguing against at all moments and points was this anemic form of citizenship that people expected black people to accept and be grateful for. And I often come back to that like, what does that mean that you acknowledge that you have citizenship rights, but that you, you want them to be more robust. What you have is anemic. That's putting the emphasis on the structure and not the individual. And that is what resonates for me in this case, that it is arguing for, we want a robust education as a means of citizenship. Let's stop this fiction that education is separate from citizenship.

Berkshire So Jack listening to Noliwe talk about the historical precedent for this idea of a more robust concept of citizenship. I found myself thinking as I often do of something that you wrote.

Schneider Yeah, I wish, I wish that people could see your eyes as you say that. Yes, yes. Jennifer go on. You don't read what I write, but occasionally you force yourself to. Go on.

Berkshire Well, I was just thinking about how neatly this dovetails with the argument that you've been making for some time now about how the narrowing of the definition of what schools do narrows the kinds of kids who come out of those schools. Right?

Schneider Absolutely. So particularly right now during the pandemic when schools have really been reduced to doing not a whole heck of a lot with students, I think it's quite clear that if schools did those few limited things really well, we would not all be better off. We would not be achieving something resembling equity even if all students were literate, for instance. And that would be a fantastic outcome. Schools still do so many things that right now we're really feeling the effects, because they aren't doing those things. And so I think it's easy to imagine right now what it would be like to not have schools doing all of that for young people. And if the standard, if the threshold becomes something as narrow as literacy, then we let schools off the hook. We let ourselves or society off the hook for doing everything that education can do and doing it for all young people.

Berkshire That really brings us to what makes the Detroit case so complicated. That on the one hand you have this really exciting argument about education and citizenship that's grounded in the 14th Amendment. And on the other hand you have what the court of appeals actually said. Michael Rebell is the executive director of the Center for Educational Equity at Columbia University's Teachers College. He's the lead attorney for another right-to-education case in Rhode Island. When the Gary B ruling came down Rebell celebrated, but that's not the end of the story.

Michael Rebell I did in some ways. In some ways I didn't. I think it's great that we had this breakthrough and we have gotten a court and a relatively high court to say there is indeed a right to education. I'm a little concerned that the right has been defined in very narrow terms. I don't think literacy is enough. I think kids need to learn a lot more than that. And you know, our particular angle is that there's a constitutional right to prepare kids who are capable of citizenship. And certainly as the plaintiffs here emphasized time and again, if you can't read and write, you can't be an intelligent voter. You can't be competent in exercising your free speech rights. But to exercise your free speech rights and to be a competent voter, you need a lot more than basic literacy. That's my position.

Berkshire But even the narrow ruling about a right to literacy may be helpful for making the more fundamental argument about a right to education. Rebell says that the Gary B decision has changed the atmosphere for the Rhode Island case.

Rebell We have a hurdle in the Rhode Island case of course in getting a judge to agree that courts should be getting involved in this kind of policy issue. So the fact that another court and a court at a higher level has now said that courts should get involved. That's very helpful for us. But we're hoping that our judge will, um, agree with the sixth circuit as far as it went. But define the right in much stronger terms.

Berkshire The Rhode Island case defines the right more broadly to include all of the skills that kids need for what Rebell calls civic preparation.

Rebell So we talk about, um, the right in terms of civic knowledge, which means, um, you know, substantial knowledge of, uh, history, economics, civics, how governments work. It means civic skills, which are critical analytic skills, things like media skills. Knowing how to properly distinguish false from accurate information on the internet. Social media, we talk about civic experiences and um, uh, the literature shows that, um, the most important things schools can do. Um, as far as preparing kids to be voters to be civically engaged is extracurricular activities, which, uh, things like speech and debate and trips to the local legislature, student government or even, um, being active in a, in a drama production where, um, you learn a lot of organizing skills, you learn how to get along with people from different backgrounds, that stuff so important. And then our last area is what we call civic values, which are largely democratic values like, um, rule of law. Like, uh, understanding the importance of being able to, um, have civil conversations with people who hold different views, tolerance, things like that.

Berkshire One thing that was a little bit challenging as I was doing that interview with Michael Rebell was that he would kind of put me on the spot about my own civics knowledge. So for example, he did want to know about, you know, just how well I understood the workings of the judiciary in this country. And, um, I very deftly just, you know, said, well, it's been a while. Right? But Jack I thought is a special treat. I could put the question that he asked me to you.

Schneider Oh, great. That's really wonderful. And potentially embarrassing.

Rebell You know, there are 13 basic federal circuits for different geographic areas. Are you familiar with that?

Schneider Jennifer, clearly you didn't grow up singing the appellate court jingle that I grew up singing.

Berkshire Is it going to have a tune?

Schneider I can't even get the words out!

Schneider The numbers move from East to West one's federal States,

Berkshire Thiis did not just happen.

Schneider There's actually an exception to that. And that's, uh, the appellate court. That includes Florida, Alabama, and Georgia. That's 11. And that's pretty far East. But the rest of them do move East to West. Numerically.

Berkshire OK - so now that we have an appellate court jingle to assist us it's time to talk about what happens next in the case of Gary B v Whitmer. And here's where the story gets even more complicated. Whitmer is Michigan Governor Gretchen Whitmer whose name we've been hearing a lot lately. And the activists in Detroit we heard from earlier have been sending a loud message to the governor - settle this case now.

Detroit activists audio

Berkshire Settling means a financial settlement at a time when Michigan's economy is in freefall. But continuing the case means Whitmer is challenging Detroit students and their right to education. Not exactly great optics for someone who is routinely mentioned as a possible Biden VP pick. Rebell says that there's one other option for Whitmer.

Rebell And the other option is to just, um, let the remand go forward and let the case be prepared for trial. And, um, you know, that's likely to take a while with all the discovery. The information then has to be pulled together. So it probably would take a year or two to get ready for trial and that, um, at the lease would store things and, and um, uh, you know, you can always settle even on the, uh, the day before the trial.

Berkshire So Jack, I think we have conveyed in many different ways to our listeners just how complicated this case is.

Schneider That is one of the goals of the show, Jennifer, to show people a little bit of nuance out there in the world.

Berkshire We've been talking about how the politics around this case are complicated, but then you have the political situation unfolding in Michigan right now. Basically the state is on fire. There've been all these protests against Governor Whitmer and the stay-at-home orders she's imposed to try to deal with COVID-19 which has hit Michigan particularly hard. And it turns out that our own Secretary of Education Betsy DeVos may have had a little something to do with the protests that have been getting so much attention. This is a clip from the New York Times podcast the Daily.

Berkshire So Jack, do you know how the daily found out about that?

Schneider Was it because Quinn Strassel dropped a tip to the tip line?

Berkshire This has nothing to do with Betsy DeVos the Musical. No, actually the Times ran a big story about the Michigan protests and they mentioned that the one of the protest organizers was a gentleman whose name I immediately recognized as an employee of the DeVos family. They didn't mention this, so I helpfully pointed it out to the reporter and now it is part of the New York Times lore as we just heard.

Schneider It's like you had dinner with someone who knows Ted Danson.

Berkshire So I bring this up not just as an example of how great I am, because you know how we're always talking about how great you are.

Schneider You're wonderful. The next show can be dedicated to how wonderful you are, Jennifer.

Berkshire So I bring this up because I actually think that it's relevant to the Detroit case. That what you see playing out in Michigan right now is this incredibly fraught dynamic where you have the right wing, well-organized and well-funded, basically playing on racial resentment, right? You have them, you have people saying, you know, this is basically a Detroit problem. It's people who are in Detroit who are, who are falling ill, who are dying, why are we suffering in our rural part of Michigan? And this just, it is exactly the playbook that the right has used in Michigan with regards to education for all these years, right? That your taxes are too high because of the Detroit teacher's union. Your money's just being wasted on Detroit kids. And so when I saw this I just immediately thought this is, this is the story of Michigan politics and it's hard, it's hard to look at the case and what the students have been fighting back against without seeing that.

Schneider I think that's particularly important to think about in light of the fact that increased reliance on state funding has been a very intentional move for funding equity. That before that was the case that most funds came from local property taxes. Historically, less than 10% of

overall funds have come from the federal government and it's only in the past few decades that we've seen about 45% on average nationally coming from the state and another 45 from property taxes. Before that most funds were produced at the local level through property taxes and led to highly inequitable resources for local public schools.

Berkshire Well, Jack, I don't know about you, but I am really exhausted and

Schneider Really tired, really ready to get off of this Zoom call.

Berkshire No - ready for a pick-me-up!

Schneider Yes! Do it!

Berkshire Yes - it's time for another installment of 60 seconds of sunshine. We're going to hear from a middle school social studies teacher in Boston. And her school year was going great. She'd arranged for her students to travel to Washington DC in June to attend the Poor People's Campaign march, and then of course a pandemic intervened. And so Suzie went looking for ways to bring the civil rights movement and its lessons to her students virtually. She found a book called Memphis, Martin and the Mountain Top by a writer named Alice Faye Duncan. And, well, I'll let Suzie tell the rest of the story.

Suzie McGlone Well, I got in touch with the author and I asked her to come into my zoom classroom and speak to my students. Well, she did and my students had such a great experience listening to her tell her life story and describing the book and talking about the word "essential." She made the students repeat the phrase, "I am essential" back to her all on the Zoom. I heard 66 voices saying back, "I am essential," and that was really a wonderful feeling.

Also, we had a great discussion about how exactly 52 years ago, Dr. King had recognized those sanitation workers as essential workers when many people were not doing so. And that's what that moment was about. And it really began to connect with this moment in history because many of my students have family members who are also essential workers but who may not be getting the dignity or the pay that they deserve. Though this has been a very difficult time and I hate not being able to see my students I'm really grateful that we got this moment to learn this lesson and to learn it deeper and to have this wonderful author visit our classroom via Zoom. So that is my 60 seconds of sunshine. I'm Susie McGlone. I teach sixth grade humanities in the Boston Public Schools.

Schneider Jennifer, every time we do 60 Seconds of Sunshine, I feel like we, the inclusive we that I'm using there, we made a really good decision by including that at the end of the show. And because you end up doing most of the legwork for that, making our idea come to life, I have prepared a gift for you and that is, I will be luring people to the edges of the paywall today. And beyond that paywall Jennifer is a discussion that I'm imagining you're going to be very eager to take part in. And that discussion was generated by a Forbes article that I found headlined to

save the children Harvard magazine calls for the abolition of the family and just under that is a picture of Lennon and uh, young people in uniforms running across the stage with Soviet flags. And so Jennifer, we are going to talk about a much discussed article published in Harvard magazine called The Risks of Homeschooling in which a law professor at Harvard makes the case that homeschooling should be outlawed. And people were mad.

Berkshire Well, I'm very excited to talk about this. When I saw that Mike Pompeo had tweeted, Secretary of State, Mike Pompeo had tweeted about this article, I knew that it needed to be discussed In the Weeds by us.

Schneider So those of you who are looking forward to this conversation but do not presently have access to it, you can gain such access by going to patron.com searching for have you heard and becoming a sustainer of our show. It's how we pay the bills. And if you are not interested in doing that, if you are ready to call it a day, um, we've got one more task for you and that is to choose your own adventure for how to support the show, uh, outside of the capitalist system. And you can do so by tweeting about it, by telling your friends, by sharing a favorite episode or by going online and shooting us an email and just saying hi.

Berkshire Jack, you did such a great job there. I think from now on, you should really be our pitch man.

Schneider Yeah, that's perfect. I will take that responsibility and abuse it liberally. Uh, Jennifer, since I'm wearing the big boy pants right now, I'm going to go ahead and take the lead and say goodbye. Um, I'm Jack Schneider.

Berkshire And I'm Jennifer Berkshire. Thanks everybody for listening and we'll be back in a couple of weeks.