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RACE, LOUISVILLE, AND CLASS-BASED SCHOOL ASSIGNMENT: COULD IT HAPPEN IN CHICAGO?

by ELIZABETH NELSON

THE SEATTLE CASE

On June 28, 2007, in a five-four decision, the Supreme Court ruled that Seattle's and Louisville's school assignment plans were unconstitutional and held that school districts could no longer integrate elementary school classrooms by assigning students to schools based on race.¹ The decision in *Parents Involved in Community Schools v. Seattle School Dist. No. 1 (PICS)* was hailed by individuals who favor race-blind polices, but sharply criticized by many civil-rights groups as a further erosion of the landmark case *Brown v.*

Board of Education. Chief Justice Roberts, writing the majority opinion, stated that by classifying students by race, school districts perpetuated the unequal treatment that *Brown v. Board of Education* outlawed.² He further commented, “the way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”³

In opposition, Justice Stevens wrote in his dissent that citing *Brown* to rule against integration was “a cruel irony.”⁴ Similarly, Justice Breyer concluded in his dissent that invalidating the plans under review was to threaten the promise of *Brown* and would be a decision the Court and the Nation will come to regret.⁵

Justice Thomas, writing separately to address Justice Breyer’s dissent, noted that “because ‘our Constitution is colorblind and neither knows nor tolerates classes among citizens,’ such race-based decision-making is unconstitutional.”⁶ Likewise, Justice Kennedy agreed with the majority but acknowledged in his concurrence that the Court’s ruling “should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds” and that race could sometimes be a component of school efforts to achieve diversity.⁷

Dennis Parker, Director of the American Civil Liberty Union’s Racial Justice Program, calls the rejection of the Seattle and Louisville school plans a “significant step backwards in a nation where schools are becoming increasingly segregated by race and ethnicity.”⁸ Similarly, Linda Lenz, Founder and Publisher of *Catalyst Chicago*, an independent newsmagazine created in 1990 to document, analyze, and support school-improvement efforts in the Chicago Public Schools, remarks, “I thought it was unfortunate that voluntary efforts to integrate schools are suffering as a result of the ruling, though I do understand to some extent.”⁹ She adds, however, that “school districts are going to have to look to other ways to effect diversity in schools.”¹⁰

LOUISVILLE’S CURRENT PLAN TO DESEGREGATE

Unlike Seattle, which voluntarily took up desegregation efforts, Louisville was ordered to desegregate its elementary schools from 1973 to 2000.¹¹ Louisville chose to use a race-based plan to achieve the goal of desegregation by seeking a black student enrollment between 15 and 50 percent at every school.¹² After

the *PICS* case, Louisville Mayor Jerry Abramson expressed his disappointment because Louisville had provided “a quality education for all students and broken down racial barriers.”¹³ When asked if any good could come of the court’s ruling, School Assignment Director for Jefferson County, Pat Todd, says, “No – we’re *already doing* what we should be.”¹⁴

Louisville’s student population, at nearly 100,000 students, is 35 percent black and 55 percent white.¹⁵ After Todd discovered that in 40 of the 90 schools in the district, 75 percent or more of the students come from low-income homes and performed worse when they attended school with other poor students, she encouraged Louisville to follow in the footsteps of four other districts and switch to class-based integration.¹⁶ John Powell, Director of the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, used a “class-plus-race” methodology to define the district’s areas of “low opportunity” by measuring income and educational levels of adults, creating a map to use as a guide for school integration.¹⁷ Instead of making schools between 15 and 50 percent black, Louisville made schools between 15 and 50 percent from a certain geographic area – the higher-minority, lower-income, and less-educated side of town.¹⁸

Called the “contiguous boundary” plan, this recommendation rearranged the district’s elementary schools into six clusters, aspiring to preserve the goal of diversity and contribute to a higher quality of education for students.¹⁹ In response to the introduction of this plan, Byron Leet, an attorney who represented the school district in *PICS*, cited Kennedy’s concurrence and said that the new plan is constitutional because officials do not use an individual’s race in assigning them to a school.²⁰ Louisville’s attorney Ted Gordon disagreed, saying that the new plan uses class as a proxy for race and is therefore unconstitutional and challengeable.²¹

Lenz notes that “looking at poverty levels and class is a proxy for race, so this is a logical direction to go. Society is trying to resolve these issues those who are poor or don’t score well.”²² Louisville Reverend John Carter of Green Street Baptist Church initially spoke against the new plan, calling for a return to neighborhood schools, but changed his mind when he learned that doing so would lead to median household income varying from more than \$100,000 at some schools to less than \$8,300 at others.²³

SO WHAT DOES THIS MEAN FOR CHICAGO?

Dr. Allan Alson, Associate Director for Leadership Development for the Consortium for Educational Change, notes, “It is clear that Chicago is going to have to come up with a new formula for school assignment in the near future.”²⁴ Unlike Louisville, where 60 percent of its students are low-income and one-third of those students are white, 74 percent of Chicago students are low-income, 88 percent of whom are black.²⁵ Therefore, in Chicago, basic demographics indicate that it would be extremely difficult to integrate Chicago public schools by either race or class.²⁶

Because Jefferson County’s school district also encompasses Louisville as well as the surrounding suburbs, families cannot just move a short distance to avoid integration efforts.²⁷ In theory, however, big cities like Chicago could diversify their schools by persuading many more middle-class and white parents to choose public over private school or by joining forces with the wealthier suburbs that surround the city.²⁸ Critics of these plans, such as Robert Holland, Senior Fellow for Education Policy at the Heartland Institute, feel that “racial-balance busing by any other name is just as self-defeating” and that big cities like Chicago should look at alternative methods of school assignment, like universal vouchers.²⁹

When the *PICS* case was decided, Justice Breyer quoted former Justice Thurgood Marshall: “Unless our children begin to learn together, there is little hope that our people will ever learn to live together.”³⁰ The question remains, however, whether the children of Chicago will have this opportunity.

NOTES

1 *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 127 S.Ct. 2738, 2768 (U.S. 2007).

2 *Id.*

3 *Id.*

4 *PICS*, 127 S.Ct. at 2797.

5 *Id.* at 2837.

6 *Id.* at 2788 (citing *Plessy v. Ferguson*, 163 U.S. 537, 559 (U.S. 1896))

7 *Id.* at 2792.

- 8 Mark Sherman, *Court Rejects Louisville Schools' Diversity Plans*, The Daily Independent Online, June 28, 2007, available at http://www.dailyindependent.com/schools/local_story_179110650.html.
- 9 Telephone Interview with Linda Lenz, Founder and Publisher, Catalyst Chicago (Oct. 29, 2008).
- 10 *Id.*
- 11 NAACP Legal Defense and Education Fund, The Seattle and Louisville Voluntary School Integration Cases Briefing Paper, December 2006.
- 12 *McFarland v. Jefferson County Pub. Schs.*, 330 F.Supp.2d 834, 842 (W.D. Ky. 2004).
- 13 Sherman, *supra* note 8.
- 14 Emily Bazelon, *The Next Kind of Integration*, N.Y. Times, July 20, 2008, available at <http://www.nytimes.com/2008/07/20/magazine/20integration-t.html?emc=eta1>.
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 Antoinette Konz, *Board gets student-assignment plan Monday*, The Courier Journal, May 9, 2008, available at <http://www.courier-journal.com/article/20080509/NEWS01/805090453>.
- 20 Antoinette Konz, *New Jefferson school plan: Is it constitutional?*, The Courier Journal, September 26, 2008, available at <http://www.courier-journal.com/apps/pbcs.dll/article?AID=/20080926/NEWS0105/809260446/1008/NEWS01>.
- 21 *Id.*
- 22 Lenz, *supra* note 9.
- 23 Bazelon, *supra* note 14.
- 24 Telephone Interview with Dr. Allan Alson, Director of Leadership Development, Consortium for Educational Change (Oct. 21, 2008).
- 25 Bazelon, *supra* note 14.
- 26 *Id.*
- 27 Linda Shaw, *Integration is no longer Seattle school district's top priority*, The Seattle Times, June 3, 2008, at 1, http://seattletimes.nwsourc.com/html/education/2004453782_reseg03m.html.
- 28 Bazelon, *supra* note 14.
- 29 Editorial, *The Next Kind of Integration*, N.Y. Times, August 3, 2008, available at http://www.nytimes.com/2008/08/03/magazine/03letters-t-2.html?_r=1&emc=eta1&coref=slogin.
- 30 *PICS*, 127 S.Ct. at 2835 (citing *Milliken v. Bradley*, 418 U.S. 717, 783 (1974)).