

The Public Schools And the Challenge of The Supreme Court's Integration Decision

The High Court's complex decision in the Seattle and Louisville desegregation cases limited the means school officials can use to seek diversity, but, the authors argue, we should not lose sight of the goal.

BY AMY STUART WELLS AND ERICA FRANKENBERG

THIS PAST June, a 5-4 majority of the U.S. Supreme Court declared integration plans in Louisville and Seattle unconstitutional because of their focus on race as one factor in assigning students to schools. The Court's ruling in the *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education* cases, therefore, significantly narrowed the options local officials have to create and maintain racially diverse school enrollments and stabilize their districts by making all schools more equal.

The legal issue in these cases was whether or not school officials in districts that are no longer (or never were) under a court order to remedy state-sanctioned or de jure racial segregation can use voluntary efforts to stave off the racial segregation that would occur if all their students simply went to their neighborhood schools. Both of the districts involved — the Jefferson County Public Schools in Louisville and the Seattle

Public Schools — had, over time, adjusted their original school desegregation plans from mandatory reassignment of students based on race — e.g., “busing” — to programs allowing students and parents to choose among racially diverse schools. Under the choice-oriented programs in these two districts, more than 90% of all students were assigned to their first- or second-choice schools.¹ Furthermore, these school choice programs were designed by locally elected officials who are accountable to their constituents, most of whom strongly supported the plans.²

Hundreds of school districts across the country have adopted some variation of these plans because such voluntary integration achieves two goals. First, it provides families with choice, and second, it ensures that schools remain fairly balanced in terms of race, resources, reputation, and political clout. This balance prevents instability and the white and middle-class flight that often follows.

Despite the obvious benefits of these plans, five of the nine Supreme Court justices declared them unconstitutional, stating that districts cannot take individual students' race into account when assigning them to schools unless the program is specifically designed to remedy the harms of de jure or Jim Crow segregation. The Court ruled that such “racial classifications” violated the white plaintiffs' 14th Amendment right to equal protection under the law because they did not get

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their first-choice schools if white enrollment in these schools was already too high. At the same time, four of these five justices implied that race does not relate to opportunities in our contemporary society and thus the use of race-conscious policies — to achieve segregation or integration — is forbidden. In fact, according to Justice Clarence Thomas, any ongoing racial segregation in this country is the result of “innocent private decisions” and not racial inequality or discrimination. Student assignment policies, according to four members of the Court, must be colorblind.

And yet, the Court’s ruling was even more complicated. Five justices — the four dissenting justices plus one member of the majority, Justice Anthony Kennedy — agreed that the two school districts did indeed have a “compelling state interest” in trying to achieve racial integration, in part because of the legacies of past discrimination. In other words, five justices concluded that the *end* — integration of public schools in order to overcome the history of racial inequality — was justified. But another five justices concluded that the most effective *means* for accomplishing that end, namely policies that pay attention to students’ racial classifications and each school’s demographics, were not.

Justice Kennedy’s swing opinion cited several alternative measures that Louisville, Seattle, and other districts could use to achieve the goal of racial integration, including locating new schools between racially distinct neighborhoods, redrawing school attendance zones, and targeting recruitment of students for particular schools. While Justice Kennedy’s suggested measures provide some options for school districts, we argue, based on social science research and the experiences of many school districts, that such measures will be far less effective without the use of race-conscious student assignment plans to balance all schools simultaneously and thus create more equality across the district.

Thus school districts across the country are left with fewer options to tackle an increasingly salient problem, as major demographic changes in our society make the rationale for racially integrating our public schools — and the cost of doing nothing — even more compelling. For instance, according to the National Center for Education Statistics, 42% of public school students were members of a racial or an ethnic minority group by 2004, an increase from 22% in 1975, while the percentage of white public school students decreased from 78% to 58%. The change was largely due to the increase in Latino students, who now represent 19% of public school enrollment, up from 6% in 1975.³ Given these demographic developments and the increasingly global nature of our society, it would be shortsighted

of district officials to give up on the goal of racially integrated schools despite the Supreme Court’s effort to limit the means that they can use to achieve that goal. Indeed, we argue that there is even more at stake here than teaching children to get along across racial lines — or the “diversity rationale” — as important as that objective may be. Despite the recent focus on standards, test scores, and accountability in education, the social science research on the harms of racial segregation clearly demonstrates a powerful point made by a prior Supreme Court in the *Brown v. Board of Education* ruling: separate is inherently unequal.

This article, therefore, is written for school district officials, educators, parents, students, and advocates who understand the relationship between segregation and inequality, who want to prepare children for the 21st century, and who believe that more and not less equality is the path to a stronger democracy. Our goal is to reunite the means and the ends of racial integration in a post-*Parents Involved* era.

IF WE ARE ALL COLORBLIND, WHY IS SEPARATE STILL SO UNEQUAL?

Since the Supreme Court announced that it would hear the Louisville and Seattle cases during its 2006-07 term, lawyers and researchers have focused intently on the evidence of the *benefits of integration* for students, schools, and communities. There is a large body of research that examines the lives of students who experienced school desegregation and finds both short-term benefits (in academics and intergroup relations) and long-term benefits (increased mobility for students of color, positive racial attitudes, and higher comfort levels in racially diverse settings). Briefs filed by the two school districts and their supporters — more than 50 in total — stressed the strong, if sometimes uneven, evidence of these benefits.⁴

At the same time, 27 of these briefs offered detailed information on the other side of the school desegregation coin — namely, the *harms of racial segregation* — which has received only limited attention since the *Brown* litigation. This lack of attention to the breadth and depth of evidence of the harms of segregation is due in part to researchers’ and lawyers’ concern that these findings imply that predominantly black or Latino schools are inferior simply because they do *not* enroll white students. As Justice Thomas is quick to point out, there is no evidence that black students need to sit next to white students to learn. Furthermore, there are many examples of black educators who made the most of a morally reprehensible situation under Jim

Crow segregation and created caring and nurturing school environments.⁵

Still, as Vanessa Siddle Walker so eloquently explains, the broader racial inequality that enveloped those segregated schools meant that their graduates could go only so far. Despite the best efforts of caring educators, most segregated black schools were severely compromised by larger structures, which denied them the resources, stability, support, social networks, and status needed to give their students access to the best colleges and jobs. Today, although the blatant Jim Crow laws have been eradicated, there is strong evidence that the broader context of racial inequality in housing, labor, health care, and education — what sociologists call “structural inequality” — has a Jim Crow-like effect on public schools, ensuring that they remain separate and unequal in many important ways.

To illustrate this relationship between structural inequality and segregation — and thus explain why separate is inherently unequal — we briefly describe the body of research on the harms of racial segregation in American public schools. Drawing on the hundreds of studies cited in the *amicus* briefs to the U.S. Supreme Court in these two cases, we have identified two key strands in the literature on segregation’s harms. The first strand focuses on the critical *resources* or *inputs* that are so often lacking in segregated black and Latino schools, and the second focuses on the *outcomes* or *effects* of school segregation. Within the first strand, four characteristics of segregated schools stand out: concentrated poverty, poor teacher quality and high turnover, inadequate curriculum and supplies, and limited aspirations and social networks. The second strand emphasizes low academic achievement and graduation rates as well as instability and lack of public support. Taken together, all of these factors demonstrate the layered, all-encompassing nature of racial inequality and its impact on separate public schools. While this powerful evidence was ignored by four of the Supreme Court justices who constituted the plurality, school district officials cannot afford to overlook these lessons as they move forward after the Court’s ruling.

STRAND 1: RESOURCES AND INPUTS

Highly concentrated poverty. Several of the *amicus* briefs supporting the school districts in these cases stressed the profound relationship between racial segregation and concentrated poverty within public schools. The brief submitted by the Urban League of Metropolitan Seattle quoted a report issued by the Civil Rights Project⁶: “There is no doubt that segregated schools are un-

equal in easily measurable ways. To a considerable degree this is because the segregated minority schools are overwhelmingly likely to have to contend with the educational impacts of concentrated poverty. . . .”⁷

Many of these briefs cited the statistical analyses of the Civil Rights Project, which demonstrate that segregated all-black or Latino schools are overwhelmingly more likely than all-white schools to have at least 50% of their students poor enough to qualify for free or reduced-priced lunches or to come from families with incomes less than 185% of the poverty line.⁸ A brief submitted by scholars of housing segregation noted that while 28% of white public school students attend high-poverty schools — those with 40% or more students eligible for free and reduced-price lunches — a remarkable 71% of black and 73% of Latino public school students attend such high-poverty schools.⁹ Relating these findings to their review of research on housing segregation, the authors conclude that residential segregation remains significantly correlated with race because even blacks and Latinos with relatively high incomes are far more likely to live in poor communities than whites with a similar incomes.¹⁰ Therefore, despite the arguments of some Supreme Court justices, race is a strong predictor of whether or not a child will live in a mostly poor community and attend a mostly poor school. Clearly, the impact of broader inequality — especially segregated housing and labor markets that widen the income gap between the rich and the poor — exacerbates the degree of concentrated poverty for students of some races/ethnicities but not others.

Lack of qualified teachers and high teacher turnover. Because racially segregated schools are almost always located in communities that are extremely isolated by race and class themselves, it is not surprising that another prominent characteristic of these schools is a shortage of qualified teachers, combined with a high level of teacher turnover. A full 85% of the teachers in the U.S. are white,¹¹ and almost all of them are college educated and middle class, which means very few of them live in (or even near) neighborhoods where predominantly black and Latino schools are located. This distance between segregated black and Latino schools and white teachers’ homes poses more than a logistical problem; it also is likely to exacerbate white teachers’ fear of unknown communities, fear of people of different racial backgrounds, and fear of teaching poor children, many of whom lack the kinds of supports that help them achieve on tests that now carry high stakes for students and schools.

Furthermore, those teachers who do end up teaching in segregated black and Latino schools generally

do not stay for long, contributing to a chronic teacher turnover crisis. Hence, 15 of the 27 *amicus* briefs that provided evidence related to the harms of segregation included information on the lack of qualified teachers in segregated schools. For instance, the brief of the former chancellors of various University of California campuses noted that the likelihood that a teacher is fully credentialed varies inversely with the proportion of blacks or Latinos in a school. The brief states: "This problem is directly related to the racial make-up of schools *independent* of other factors such as teacher salaries, school poverty, or student achievement."¹² The brief cites research concluding that even when segregated black or Latino schools are able to attract high-quality teachers, they have a very hard time keeping them: "Controlling for school poverty, teacher salaries, and other school and district characteristics, California teachers are more likely to transfer out of schools with higher black or Latino enrollment. . . ."¹³

In sum, the former chancellors write, the *racial* make-up of a school is the most crucial factor in determining students' access to the most important educational resource that schools can provide: good teachers. It is no accident, they note, that the black and Latino students who gain access to the University of California disproportionately come from majority-white high schools.

Lack of college-prep curriculum and other educational resources. Poorly prepared and underqualified teachers are less likely to offer their students the most difficult curriculum. And if they are teaching in high-poverty, racially segregated black or Latino schools, they are less likely to have the supplies to engage students in challenging, hands-on, or project-based learning. We know, for instance, from several briefs filed in these cases, that racially segregated, predominantly black or Latino schools generally offer fewer challenging college-prep opportunities, including honors and Advanced Placement courses, for complicated reasons that are intertwined with many other of the schools' characteristics. This lack of rigor creates a curricular gap that undermines black and Latino students' access to selective colleges and universities.¹⁴

The brief filed by the Black Women Lawyers' Association of Chicago discusses this cycle of academic deprivation in racially isolated schools, which denies even their highest-achieving students equal educational opportunities because there are not enough students ready for Advanced Placement courses to meet the minimum-enrollment requirement. The end result is that those courses are eliminated or never offered in these schools, and even students who are ready for them are denied that opportunity. In fact, this brief cites research

Once the schools became unbalanced racially, the larger structural inequality and the legacy of racism began to strongly influence parents' perceptions of which schools were "good" and which were "bad."

demonstrating that the greater the proportion of a child's education spent in segregated African American schools, "the less likely the child was to be placed in college-bound tracks in secondary school."¹⁵

Limited aspirations and less-powerful social networks. Given the evidence presented thus far, it is not surprising that oftentimes, black and Latino students attending racially isolated schools internalize the degrading effects of segregation, which leads to feelings of shame and anger, as well as limited aspirations. This point is made repeatedly in an *amicus* brief filed by the New York City Bar Association, which focuses on the negative consequences of the "educational apartheid" that characterizes the New York City Public Schools. This brief quotes students cited in Jonathan Kozol's latest book who attend segregated public schools in New York, including one enrolled in a school in the Bronx: "It's like we are being hidden. . . . It's as if [students of color] have been put in a garage where, if you don't have room for something but aren't sure if they should throw it out, they put it there where they don't need to think of it again."¹⁶

Contributing to these feelings of helplessness, hopelessness, and being forgotten by the larger society is the degree to which poor students of color in segregated schools are shut out of valuable social networks, in part because of their segregation and in part because of related factors discussed above. According to a brief filed by Latino advocacy organizations, "skilled and experienced teachers are not only an important factor in student achievement, but also a source of support and networking for the college admissions or job hunting process."¹⁷ The authors of this brief note that in racially isolated schools, Latinos have less access to racially and ethnically integrated networks of teachers, peers, or alumni, which places these students at an additional disadvantage relative to their counterparts in integrated schools.¹⁸

STRAND 2: OUTCOMES

Low academic performance, graduation rates, and college-going rates. The unsurprising net result of these characteristics of racially segregated schools is a set of academic outcomes directly related to the segregation itself. And thus a great deal of the research cited and discussed in these *amicus* briefs demonstrates the tightly

connected relationship between the factors discussed above and outcomes — especially the academic achievement of segregated black and Latino students. In fact, 15 of the 27 briefs reviewed for this article provide research evidence from national datasets and school districts as disparate as Boston, Charlotte, and San Francisco that demonstrates the negative impact of racial segregation on the academic achievement, graduation rate, and college-going rate of black and Latino students. For instance, an *amicus* brief submitted by former school board members, parents, and advocates in Charlotte, North Carolina (known as the Swann Fellowship), documented the growth of the achievement gap between black and white students *after* the district began to resegregate.¹⁹

Similarly, the brief filed on behalf of 553 social scientists cites a national study that found that schools with a higher concentration of blacks and Latinos tend to have lower "promoting power" (the percentage of students promoted to the next grade each year) than majority-white schools.²⁰ The research also suggests that students in predominantly minority schools are less likely to graduate from college, even after accounting for their prior test scores and socioeconomic status.²¹

In terms of dropout rates, the brief of Latino Organizations states that the national crisis is more acute for Latinos than for any other racial group and that "the problem is even more pronounced in large inner-city school districts, among foreign-born Latinos, and among ELLs [English Language Learners]."²² This brief also notes that Latino students have the lowest college matriculation rates of any other racial/ethnic group; in 2004, less than a quarter of Latinos between the ages of 18 and 24 were enrolled in higher education institutions, with the majority of those who were enrolled attending two-year colleges.²³

Added together, these and other similar data do not bode well for the academic outcomes of segregated schools. While there may be some isolated exceptions to these trends — educators in racially isolated and poor schools who have improved test scores in the short run — such victories are muted by the larger structures, constantly working against such schools and their students, that make the correlations between segregation and low achievement, high dropout rates, and low college-going rates extremely high. Obviously, while the more successful schools should be celebrated for overcoming the

odds, we should not delude ourselves into thinking that these schools, in and of themselves, are the solution to a much broader problem.

Instability, flight, and lack of public support for public education. This broader, systemic problem is even more apparent when we look at the political implications of racial segregation in public schools. The most specific of the seven briefs that discuss this issue is the one filed by the Swann Fellowship of Charlotte. The authors of this brief know the political cost of resegregation firsthand, as their school district has shifted in the last 15 years from being one of the most racially integrated to becoming a system made up mostly of racially isolated neighborhood schools.

The central problem in Charlotte is that once the schools became unbalanced racially after years of integration, the larger structural inequality and the legacy of racism began to strongly influence parents' perceptions of which schools were "good" (nearly all-white suburban schools) and which were "bad" (racially isolated black schools). These perceptions then created an accepted view across the district that things were unequal and unfair, despite school officials' plan to improve the lowest-performing, predominantly black schools. Such perceived unevenness of school quality led parents to believe that they were in "a battle against each other for the best schools and the most resources."²⁴

As a result, public support for the Charlotte-Mecklenburg Schools (CMS) began to decline in the 1990s, when the early phase of resegregation pitted school against school and community against community. In fact, according to the Swann Fellowship brief, because of the increasingly varied reputations of schools in Charlotte after 2002, the district was forced to end the parental choice and transfer programs for non-magnet schools when white families overwhelmingly chose schools in their predominantly white neighborhoods. Those schools quickly became overcrowded and thus closed to African American and Latino students who lived outside these privileged neighborhoods, further exacerbating the unequal school reputations across color lines. This phenomenon is not unique to Charlotte; other cities across the country have had the same experience.

At one time the Supreme Court also understood, according to a brief written by students at Howard University Law School, that because of our country's racialized history, "predominantly black schools are perceived as inferior no matter how equal they might be in other measurable aspects." This brief cites past Court rulings to demonstrate the extent to which prior justices were concerned about whether or not a desegregating

school district continued to have racially identifiable schools. The authors argue that the Supreme Court has, in the past, asked whether a school was perceived as "black" or "white," because "so long as such a perception persisted, whites would not attend a 'black' school and the schools were apt to become unequal." Furthermore, the law students note, prior Courts have acknowledged that "black" schools lead to "black" districts, from which whites have fled. "In short, the Court knew and history has shown that racially isolated or identifiable schools, even when not *de jure*, threaten equal educational opportunities for blacks and the goals of *Brown*."²⁵

THE RATIONALE FOR ACTIVE SCHOOL DESEGREGATION

What these and many other *amicus* briefs make painfully clear is that the harms of racial segregation are broad-based and systemic. These layered and intertwined harms most directly affect poor students of color by providing them unequal educational opportunities, but they do more than that.²⁶ These harms also maintain and perpetuate the larger structural inequality manifested in segregated neighborhoods, an hour-glass economy, a growing childhood poverty rate, a rapid increase in Americans without health insurance, and the lack of funding for public schools in poor communities. Such inequality, woven into the fabric of our housing market, labor market, health care system, and public education, has created a situation in which, more than 50 years after *Brown v. Board of Education*, the active desegregation of public schools is still necessary.²⁷

And thus, despite what several of the Supreme Court justices stated, it matters not, at this point in our country's history, whether racial segregation in public schools is *de jure* (state-mandated) or *de facto* (having developed through markets and private practices without a legal mandate, but often with the support of public policies). The legacies of *de jure* segregation, or Jim Crow, and the ever-increasing *de facto* segregation are tightly intertwined, and thus the results of each are the same.

It is this centrality of structural inequality and its relationship to racial segregation that four of the five Supreme Court justices who made up the majority in the *Parents Involved* decision completely denied in putting forth their "colorblind" argument. And yet, we should not be surprised by this ruling because the "colorblind ideology" has been a work in progress by conservative judges since the 1970s, when the courts became less willing to consider the broader effects of historical and societal discrimination on students of color who were

applying to universities or trying to gain access to more integrated public schools.²⁸

Beginning with its ruling in the 1974 urban/suburban school desegregation case, *Milliken v. Bradley*, and continuing with the 1978 affirmative action case, *Regents of University of California v. Bakke*, the Supreme Court rejected the use of race-conscious policies as a means of remedying past racial discrimination unless there was evidence that the harms of segregation were the direct result of state-imposed segregation.²⁹

The Court's ruling in *Bakke* did, however, support a more limited form of affirmative action in higher education on the basis of the argument that we need to prepare students for an increasingly diverse society. This so-called diversity rationale has carried enough weight with enough justices over the years to keep some race-conscious policies alive, but judges have continued to move further away from understanding the ongoing structural inequality in this society and the central role that the legacies of prior racial discrimination play in maintaining it. Ironically, Vincene Verdun writes, use of the *Bakke* "diversity rationale" separated affirmative action in college admissions from the pervasive historical discrimination that contributed to the need for it. "It is mind-boggling that it has become impossible to prove discrimination, historical or current, in a society when all agree discrimination was a stark feature in our history and that it still exists."³⁰

Despite the ongoing efforts of some justices to detach our nation's history from our present-day inequality, as we have noted, the research on the harms of racial segregation illustrates the powerful relationship between the past and the present. Furthermore, despite decades of efforts to eradicate segregation in public education, it is on the rise around the country.³¹ In addition, because of the demographic changes we mentioned above, many school districts are going through massive racial transitions, and concentrated poverty is spreading to once-middle-class suburbs.³²

Individuals cannot easily escape racial segregation in public education without social policy that begins to change the very structure of the housing market or student assignment plans. Any policy designed to chip away at this structure must be comprehensive and broad based. Piecemeal change is simply not enough.

THE LIMITS OF KENNEDY'S PERMISSIBLE MEANS AND THE COLORBLIND ALTERNATIVES

The irony and thus confusing reality for school districts after the *Parents Involved* decision is that although

five justices agreed that there is a compelling interest in having racially integrated schools, a different set of five justices declared unconstitutional the means that Seattle and Louisville used to accomplish that goal, which included the racial classification of students and guidelines for racially balancing each school. As we noted, Justice Kennedy's separate opinion outlined other, less comprehensive measures that might still be allowable to accomplish the goal of racial integration.

Perhaps in a society that was not so clearly defined by structural inequality and the racial segregation that maintains it, Justice Kennedy's limited race-conscious strategies or the "colorblind," race-neutral alternatives the plurality opinion favors would hold some promise. But in our still very separate and unequal society, we argue, first, that Justice Kennedy's far more limited approaches to integrated schools — e.g., strategically locating new schools, redrawing school attendance boundaries, targeted recruitment — would still allow, in most instances, a great deal of racial segregation across a district.

In fact, there is ample evidence that such less-systemic, piecemeal approaches to desegregating schools can lead to instability and white flight because the measures fall short of ensuring that all schools are balanced according to race and thus more equal in terms of the factors we discussed above, including teachers, curriculum, resources, public support, and perceived status. As problematic as it may sound in the 21st century, the racial makeup of a school or neighborhood is still a marker of its status in the society.³³ That is why more comprehensive policies that take the race of each student into account in the school enrollment process, thereby ensuring a more equal outcome, are needed.

A comparison of districts with varying desegregation plans or no plan at all found that those with the most comprehensive plans — e.g., city/suburban transfers and racial balancing across schools — were the most stable and most integrated in terms of their schools and their housing.³⁴ According to Pat Todd, the Jefferson County Public Schools' executive director for student assignment, the racial guidelines the district had been using for each school — no more than 50% and no less than 15% black students — were strictly enforced and had become a sort of "moral yardstick" for the community. She added that a district does "not want to create some schools as a haven for those who do not embrace the goals of diversity. . . . [It's] important for it to be a vision for the total district."³⁵

History has taught us that where there is not a systemwide approach and school racial compositions vary widely, schools' reputations and status will also vary

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along racial lines and so will parents' choices. As we described above, Charlotte's shift from a comprehensive race-conscious student assignment plan to a race-neutral neighborhood-schools approach resulted in increased racial segregation and none of the promised improvements in the black/white achievement gap, despite extra resources for segregated black schools.³⁶

Just as the race-neutral neighborhood-based plan failed in Charlotte, we believe that the two other most commonly mentioned colorblind or race-neutral alternatives — socioeconomic-based plans and market-based choice plans — will not produce racially integrated schools in most communities.

In fact, officials in Wake County (Raleigh), North Carolina, the largest school district with a student assignment plan based on family socioeconomic status (SES), filed an *amicus* brief with the Supreme Court supporting the need for the race-conscious measures used in Louisville and Seattle.³⁷ An analysis of five school districts, including Wake County, that use SES-based plans (and have been touted by the U.S. Department of Education as examples of districts that have achieved success with race-neutral alternatives) showed that re-segregation occurred in two of the districts and racial isolation increased in the other three.³⁸

Furthermore, Jefferson County's Pat Todd, quoted above, questioned whether such plans would garner widespread political support. She looked at several of the school districts with SES integration plans and concluded that such a plan would most likely be less successful in Louisville than the race-conscious plan. Suggesting that people in Louisville are far from "colorblind," Ms. Todd explained that her constituents understood the history of race. "They learned about slavery and Jim Crow and that there are wrongs that need to be righted." However, she said, it is harder for them to comprehend the idea of integrating schools according to income or socioeconomic disadvantage. "Then they say, isn't that about ambition and making the most of yourself and pulling yourself up by the bootstraps? . . . We cannot assume that people will embrace these other strategies with the same degree of enthusiasm."³⁹

Another suggested colorblind solution to racial segregation is the use of market-based school choice policies, such as charter schools and private school vouchers. Yet social science research on such programs suggests

that they often lead to more and not less stratification by race/ethnicity.⁴⁰ There are several possible explanations for this outcome — admissions policies that dissuade some students from applying, racially segregated social networks, or a lack of transportation to bring students together from across racially segregated neighborhoods. In addition, as we noted above, when a school becomes identifiable according to the race of its students — as the "black school" or the "white school" — parents begin to perceive school quality and whether or not their children "belong" there in racialized terms. Charter or private schools made up mostly of African American or Latino students, like their regular public school counterparts, lack the status to attract white and wealthy students and the resources and opportunities that follow those students to school.

Creating more balance, equality, and racial diversity across all schools is the best way district officials can ensure stability while preparing students for life in the 21st century — the "end" that a majority of the justices endorsed.

WHERE SCHOOL DISTRICTS SHOULD GO FROM HERE

By invalidating the *means* of the successful Louisville and Seattle plans, the Supreme Court removed some of the most popular and effective integration tools. But given that the vast majority of people in this country say they believe that children of different racial and ethnic backgrounds should go to school together — a belief supported by a wealth of social science research — district officials should not give up on trying to bring students together across racial lines.⁴¹ As Pat Todd notes, school officials need to maintain a "sense of urgency" about heading off the harms of racial segregation.⁴² Nor should these school officials be overly concerned when "colorblind" advocates threaten expensive lawsuits. Similar threats to colleges and universities after the Supreme Court sustained limited affirmative action policies in its *Grutter v. Bollinger* decision of 2003 resulted in little actual litigation.

While no one yet has the answer to the question of exactly how to proceed from here — and there probably will be different answers for different communities — educators, policy makers, lawyers, and research-

ers are working together in sites across the country to come up with viable ways to shield students from the harms of segregation in a post-*Parents Involved* era. To add to this dialogue, we discuss below options for alternative student assignment plans as well as other complementary means that can help create a comprehensive, systemwide approach to integrated schools in light of the Court's decision and the inequality outlined above.

EXPANDING THE MEANING OF DIVERSITY AND USING LIMITED RACE-CONSCIOUS APPROACHES

District officials are still able to use a combination of diversity-based and race-conscious approaches to student assignment plans. Depending on how "diversity" is defined and the specific demographics of each district, these combined efforts may not accomplish what Louisville's and Seattle's plans did. Still, if designed thoughtfully, these revised plans can address some of the legacies of racial discrimination and structural inequality.

Using multiple characteristics that coincide with race.

One component of such a promising approach is managed choice plans, including magnet schools that use nonracial mechanisms to create diverse schools. Thus, while it is *not* legal to use a student's race on an individual basis to decide where that child can attend school, districts can use multiple characteristics that coincide with race and ethnicity, including neighborhood, socioeconomic status, native language, or parental education in an effort to create diverse schools. Magnet schools can adopt certain popular themes that will attract a diverse pool of applicants and then target their recruitment toward specific areas of the district and a wide range of racial/ethnic groups.

Such multifaceted approaches to reviewing and placing students in schools begin to move the K-12 system closer to the higher education admissions model and are more in line with the University of Michigan Law School's admissions plan approved by the Court in *Grutter* in 2003. Such an analogy is tricky for public schools, given the competitive and unequal nature of college admissions. Thus school officials should be sure that the factors considered are age-appropriate and further the goals of diversity and stability without creating more stratification.

Group-level approaches and school attendance boundaries. Furthermore, there are some more obvious race-conscious approaches that are still allowable following the Supreme Court's decision. The basic principle guiding any assignment plan is that an individual student's race/ethnicity should not be the deciding factor in where he or she is placed in school but instead should be one

of many factors considered by a district. However, group-level race-conscious approaches are permissible.

In other words, district officials could, for example, examine the racial makeup of different neighborhoods across the district and then design strategic attendance zones to allow each school to draw from two or three such zones. Officials already consider population (e.g., growth projections, number of children) when deciding where to build and close schools. Considering the racial composition of the attendance areas of new or existing schools and being aware of any racial transition can lessen the need for other measures to create more racially balanced schools. Care should be taken in this process, however, to stabilize racially integrated neighborhoods by encouraging students in those communities to attend nearby schools. Meanwhile, school officials could work more closely with local neighborhood associations, real estate agents, and housing authorities to try to tackle the most direct source of segregated public schools: segregated housing.

Interdistrict choice to further diversity. In addition, since racial and socioeconomic segregation between districts is higher than segregation within districts,⁴³ urban and suburban school districts should work collaboratively or through their county offices of education to create interdistrict magnet schools or student transfer programs that would enhance the diversity of their schools. In metro areas with existing interdistrict schooling options (Boston, Hartford, St. Louis), student demand often outstrips the supply of seats in the neighboring districts, and many suburban communities have supported these programs because they value the diversity it creates in their otherwise white schools.⁴⁴ School officials must be careful, however, not to allow such plans to worsen white flight from urban schools.

Targeted recruitment for diversity. Finally, as we noted above, targeted recruitment of students and educators by race remains an available tool that could be used in conjunction with any of these other measures. Such efforts could ensure that racially isolated families with segregated social networks get more information about schools outside their communities. Recruitment coupled with free transportation to schools of choice may not solve the segregation problems, but it can make a difference.

In other words, diversity-based programs that consider race among other factors in creating diverse schools, with careful design, can go beyond the "diversity rationale" of bringing students together. These programs, if smartly designed to acknowledge some of the key variables in structural inequality, can also help alleviate many of the harms of racial segregation.

THE PUBLIC SCHOOLS: OUR BEST HOPE

The strategies we have proposed must be coupled with efforts to ensure that people of all backgrounds feel welcome in all schools. Failure to create these conditions will result in frustration and withdrawal on the part of low-income and minority families and push white families with more resources, political clout, and privilege to seek more homogeneous school alternatives — public or private. When enough of these privileged families leave a particular public school or district, there is little that can be done to avoid reverting to the norm of poor schools for poor students of color. Despite the valiant efforts of some educators and policy makers to improve racially isolated schools in poor communities of color, history and research demonstrate that this is not a winning strategy for closing the achievement gap and expanding opportunity.

As we noted, the United States' school-age population is now more than 40% students of color. Segregation is growing, and the racial isolation of blacks and Latinos is more severe than it has been since the late 1960s. Large numbers of communities that have never dealt with racial diversity will now face these issues, as Latinos and African Americans continue to move into suburbia. If these schools and districts do not have strategies to build and maintain integrated schools and communities, they will see the same kind of white flight that occurred in urban neighborhoods 40 and 50 years ago. As a result, their students will suffer from the harms of racial segregation perpetuated by the larger structural inequalities that define our society. If, on the contrary, district officials fight segregation using some of the strategies we mentioned above and others specific to the needs and makeup of their districts, they will do their part to challenge these larger structures in ways that only public schools have been asked to do since *Brown*.⁴⁵

More than 50 years ago, Harvard psychologist Gordon Allport suggested that one of the essential conditions of reducing prejudice and discrimination was that people needed to be in contact with one another in places of relatively equal status.⁴⁶ The public schools turned out to be the best, if imperfect, institutions in which to make this contact occur. Social science research on the schools' efforts to date has proved Allport right and shown that ongoing segregation maintains the unequal status quo. Recent trends, policies, and court decisions are pushing public education further away from ending the harms of segregation — allowing for less, not more, contact across racial/ethnic groups. Meanwhile, the structural inequality in which public edu-

cation is embedded is not being addressed, placing an even greater burden on the public schools in their efforts to bring students together across color lines. Thus, while the *means* for creating this contact in public schools are dwindling, we must not lose sight of the goal.

1. The Seattle plan, which had been suspended pending the litigation, included only the high schools in the district. In Jefferson County in Louisville, four of the high schools were excluded from the plan because of a ruling in a prior case.

2. Thomas Wilkerson, "Student Assignment Survey: Summary of Findings," Wilkerson and Associates, Louisville, Ky., July 1996.

3. National Center for Education Statistics, *Digest of Education Statistics* (Washington D.C.: Institute of Education Sciences, U.S. Department of Education, 2006), at http://nces.ed.gov/programs/digest/d06/tables/dt06_040.asp.

4. See Brief of the 553 Social Scientists in Support of Respondents as *Amicus Curiae* in *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006); and Robert L. Linn and Kevin G. Welner, eds., *Race-Conscious Policies for Assigning Students to Schools: Social Science Research and the Supreme Court Cases* (Washington, D.C.: National Academy of Education, 2007).

5. See Vanessa Siddle Walker, *Their Highest Potential: An African-American School Community in the Segregated South* (Chapel Hill: University of North Carolina Press, 1996).

6. Formerly known as the Harvard Civil Rights Project, this research and advocacy center is now housed at the University of California, Los Angeles.

7. Brief of the Urban League of Metropolitan Seattle as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006), citing Gary Orfield, *Schools More Separate: Consequences of a Decade of Re-segregation* (Cambridge, Mass.: Civil Rights Project, Harvard University, 2001), p. 10.

8. Orfield, *op. cit.*

9. Brief of Housing Scholars and Research and Advocacy Organizations as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006); and Gary Orfield and Chungmei Lee, *Why Segregation Matters: Poverty and Educational Inequality* (Cambridge, Mass.: Civil Rights Project, Harvard University, 2005).

10. Brief of Housing Scholars, p. 5.

11. Karen Zumwalt and Elizabeth Craig, "Research on the Indicators of Quality," in Marilyn Cochran-Smith and K. Zeichner, eds., *Studying Teacher Education: The Report of the AERA Panel on Research and Teacher Education* (Washington, D.C.: American Educational Research Association, 2005), pp. 157-260.

12. Brief of 19 Former Chancellors of the University of California as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006), p. 3.

13. *Ibid.*, p. 26, citing Stephen J. Carroll et al., *The Distribution of Teachers Among California's School Districts and Schools* (Santa Monica, Calif.: RAND Corporation, 2005); and Susanna Loeb, Linda Darling-Hammond, and John Luczak, "How Teaching Conditions Predict Teacher Turnover in California Schools," *Peabody Journal of Education*, vol. 80, no. 3, 2005, pp. 44-61.

14. See Brief of the Council of Great City Schools, Magnet Schools of America, Public Education Network, United States Conference of Mayors, and San Francisco Unified School District as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006); and John T. Yun and Jose F. Moreno, "College Access, K-12 Concentrated Disadvantage, and the Next 25 Years of Educational Research," *Educational Researcher*, January-February 2006, pp. 12-19.
15. Brief of the Black Women Lawyers' Association of Greater Chicago, Inc. as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006), p. 18, citing Roslyn Arlin Mickelson, "The Effects of Segregation on African American High School Seniors' Academic Achievement," *Journal of Negro Education*, vol. 68, 1999, p. 577.
16. Brief of the Association of the Bar of New York City as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006), p. 14, citing Jonathan Kozol, *The Shame of the Nation: The Restoration of Apartheid Schooling in America* (New York: Crown, 2005), p. 28.
17. Brief of Latino Organizations as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006), p. 24.
18. *Ibid.*, citing Amy Stuart Wells and Robert L. Crain, "Perpetuation Theory and the Long-Term Effects of School Desegregation," *Review of Educational Research*, vol. 64, 1994, pp. 531-55.
19. Brief of the Swann Fellowship, Former School Board Members, Parents and Children from the Charlotte-Mecklenburg Schools as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006).
20. Robert Balfanz and Thomas C. West, "Racial Isolation and High School Promoting Power," in *Graduation Gap Policy Brief*, Center for Social Organization of Schools, Johns Hopkins University, Baltimore, 2006.
21. Eric M. Camburn, "College Completion Among Students from High Schools Located in Large Metropolitan Areas," *American Journal of Education*, vol. 98, 1990, pp. 551-69.
22. Brief of Latino Organizations, p. 23, citing Adriana D. Kohler, *Hispanic Education in the United States*, Statistical Brief No. 8, Conference Edition (Washington, D.C.: National Council of La Raza, 2006), pp. 3, 7.
23. *Ibid.*
24. Brief of the Swann Fellowship, p. 3.
25. Brief of the Civil Rights Clinic at Howard University School of Law as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006), p. 15.
26. Brief of the Caucus for Structural Equity as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006), p. 22.
27. Amy Stuart Wells, Jacquelyn Duran, and Terrenda White, "Refusing to Leave Desegregation Behind: From Graduates of Racially Diverse Schools to the Supreme Court," *Teachers College Record*, in press.
28. Jack M. Balkin, "Plessy, Brown, and Grutter: A Play in Three Acts," *Cardozo Law Review*, vol. 26, 2005, pp. 1689-1730; and Wells, Duran, and White, *op. cit.*
29. See Balkin, *op. cit.*; and Matthew J. Lindsay, "How Antidiscrimination Law Learned to Live with Racial Inequality," *University of Cincinnati Law Review*, vol. 75, 2006, pp. 87-141.
30. Vincene Verdun, "The Big Disconnect Between Segregation and Integration," *Negro Educational Review*, vol. 56, 2005, pp. 67-82.
31. Gary Orfield and Chungmei Lee, *Racial Transformation and the Changing Nature of Segregation* (Cambridge, Mass.: Civil Rights Project, Harvard University, 2006).
32. Alan Berube and Elizabeth Kneebone, *Two Steps Back: City and Suburban Poverty Trends 1999-2005* (Washington, D.C.: Brookings Institution, 2006).
33. Jennifer J. Holme, "Buying Homes, Buying Schools: School Choice and the Social Construction of School Quality," *Harvard Educational Review*, vol. 72, 2002, pp. 177-205; Martín Sánchez Jankowski, "The Rising Significance of Status in U.S. Race Relations," in Michael P. Smith and Joe R. Feagin, eds., *The Bubbling Cauldron* (Minneapolis: University of Minnesota Press, 1995), pp. 77-98; and Amy Stuart Wells and Robert L. Crain, *Stepping Over the Color Line* (New Haven, Conn.: Yale University Press, 1997).
34. Erica Frankenberg and Chungmei Lee, *Race in American Public Schools: Rapidly Resegregating Districts* (Cambridge, Mass.: Civil Rights Project, Harvard University, August 2002); and Myron Orfield and Thomas Luce, "Minority Suburbanization and Racial Change: Stable Integration, Neighborhood Transition, and the Need for Regional Approaches," paper presented at Race and Regionalism Conference, Minneapolis, May 2005. See also Diana Pearce, *Breaking Down the Barriers: New Evidence on the Impact of Metropolitan School Desegregation on Housing Patterns* (Washington, D.C.: National Institute of Education, 1980).
35. Pat Todd, personal communication, 25 July 2007.
36. Roslyn A. Mickelson, "The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools," *North Carolina Law Review*, vol. 81, 2003, pp. 1513-62; and Stephen S. Smith and Roslyn A. Mickelson, "All That Glitters Is Not Gold: School Reform in Charlotte-Mecklenburg," *Educational Evaluation and Policy Analysis*, vol. 22, 2000, pp. 101-21.
37. Brief of Walt Sherlin as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006).
38. Brief of the American Civil Liberties Union, the ACLU of Kentucky, and the ACLU of Washington as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and *Crystal D. Meredith v. Jefferson County Board of Education, et al.* (Nos. 05-908 and 05-915) (Sp. Ct. 2006).
39. Todd, *op. cit.*
40. Salvatore Saporito and Deenesh Sohoni, "Coloring Outside the Lines: Racial Segregation in Public Schools and Their Attendance Boundaries," *Sociology of Education*, vol. 79, 2006, pp. 81-105.
41. See Kelly Bagnishi and Marc R. Sheer, "Brown v. Board of Education: Fifty Years Later," *Trends and Tudes*, newsletter of Harris Interactive, June 2004; and *Time to Move On: African-American and White Parents Set an Agenda for Public School* (New York: Public Agenda, 1998).
42. Todd, *op. cit.*
43. Charles Clotfelter, *Public School Segregation in Metropolitan Areas* (Cambridge, Mass.: National Bureau of Economic Research, November 1998).
44. See Susan Eaton, *The Other Boston Busing Story* (New Haven, Conn.: Yale University Press, 2001); and Wells and Crain, *Stepping Over*.
45. Raymond W. Mack, ed., *Our Children's Burden* (New York: Vintage Books, 1968).
46. Gordon Allport, *The Nature of Prejudice* (Reading, Mass.: Addison-Wesley, 1954).

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