Private Initiatives Continuing Segregation in the Deep South

Many courts are facing the issue of whether desegregation efforts should continue as schools purport to achieve unitary status. While school boards are facially satisfying desegregation requirements, underlying issues have surfaced regarding the impact of private individuals on segregation. School boards are required to desegregate schools under the Equal Protection clause of the 14th Amendment and Title VI of the Civil Rights Act of 1964. However, private individuals are able to circumvent governmental regulation and instigate segregation within schools and between schools. Unlike school boards and districts that are required to desegregate, private individuals can openly segregate without governmental intervention. This essay will focus on the segregation issues that continue to exist in Southern states such as Mississippi, Georgia and Louisiana.

The History of “Separate but Equal” in Public Education

The doctrine of separate but equal did not surface in the United States Supreme Court until Plessy v. Ferguson. In Plessy, the Court found that separate railway carriages for the white and colored races was constitutional. Following Plessy, the separate but equal doctrine was used within the context of public education. The doctrine apparently originated in Roberts v. City of Boston, which upheld school segregation against an attack

1 See Plessy v. Ferguson, 163 U.S. 537 (1896).
2 Id. at 540.
as being violative of a state constitutional guarantee of equality. Soon after Roberts, the Supreme Court decided Brown v. Board of Education, finding that segregation in public schools solely on the basis of race, through the separate but equal doctrine, deprived minority children of equal educational opportunities.

Since Brown v. Board of Education, segregation in public schools has been prohibited. Subsequently, Brown II was a call for the dismantling of well-entrenched segregation systems, the dismantling of these systems would require time and flexibility for a successful resolution. School boards are charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. Next, it has been the duty of the district courts to assess the effectiveness of proposed plans in achieving desegregation. It is incumbent upon the district court to weigh proposed plans in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Whatever plan is eventually adopted is then evaluated in practice and the district court will retain jurisdiction until it is clear that state-imposed segregation has been completely removed.

Methods available for the desegregation of schools include: (1) consolidation of schools; (2) assignment of pupils; (3) school bussing; (4) non-contiguous zoning (before Brown, no black child was allowed to attend the nearest school if it happened to be

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4 Brown, 347 U.S. at 489.
5 Id.
7 Id.
8 Id.
9 Id. at 437.
10 Id.
white); (5) restructuring of grades in schools; (6) rezoning; (7) pairing, clustering and grouping of schools; (8) use of satellite zones; (9) freedom of choice, with appropriate restrictions; and (10) closing of schools.¹¹

The End of Desegregation

Recently, some courts have determined that schools have adequately desegregated and thus there is no longer a need for remedial measures. In some of the Southern states, where racism is deeply imbedded in society, these decisions seem premature as unofficial segregation continues to exist. Anderson v. School Board of Madison County is one such example of a court deciding that a Mississippi school board is no longer required to implement desegregation measures.¹²

In Anderson, the Madison County School District ("MCSD") in Mississippi filed a motion for full unitary status, claiming the district had complied with the district court’s orders and had “to the extent practicable, eliminated the vestiges of racial discrimination resulting from the former racially dual system.”¹³ Unitary status in this context refers to a school district that has done all that it could to remedy the past segregation caused by official action.¹⁴ MCSD is one of many school districts in Mississippi that at one time practiced de jure raced-based segregation.¹⁵ The district court found that MSCD was entitled to full unitary status. According to Anderson, the ultimate inquiry in determining whether a school district has achieved unitary status is whether (1) the school district has complied in good faith with desegregation orders for a reasonable amount of time, and (2) the school district has eliminated the vestiges of prior de jure segregation to the extent

¹³ Id. at 296.
¹⁴ Id.
¹⁵ Id.
practicable. The district court found that MCSD had satisfied both prongs and had thus reached unitary status.

In determining whether the district court’s decision was correct, the Court of Appeals analyzed the two prongs in light of the evidence. The Court found that the lower court had correctly found the MCSD had worked in good faith to comply with desegregation orders as MCSD had spent a considerable amount of resources renovating Velma Jackson High School (“VJHS”) and implementing a new magnet program there. VJHS has traditionally been a “one-race” school, with a 98.5% black student population in 2005. Thus, in order to encourage white students living in different zones to attend VJHS, the parties agreed to implement a magnet program at the school.

The Court analyzed the second prong by referring to the Supreme Court’s analysis using the Green factors. The Green factors include: student assignment, faculty, staff, transportation, extracurricular activities, and facilities. As to student assignment, the Court found that the MCSD acted in good faith and that its efforts to implement a successful magnet program at the high school were reasonable. In regard to facilities, the Court found that although the baseball field at VJHS did not compare to the one at Ridgeland High School, the field at VJHS was not “inadequate.” Lastly, the Court considers faculty and staff assignment. The Court determined while MCSD failed to satisfy the requirement of ensuring that faculty composition was within a 15% range of the district-wide ratio of African-American to white teachers, the Court determined that

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16 Anderson, 517 F.3d at 296.
17 Id. at 298.
18 Id.
19 Id. at 299.
20 Id.
21 Id.
22 Id. at 302.
23 Id.
MCSD’s faculty composition was “quite diverse.”24 After analyzing all of the above factors, the Court of Appeals affirmed the lower court’s decision and found that MCSD had achieved unitary status.

Private Individuals Instigating Segregation

Although some Southern state courts are beginning to find desegregation measures unnecessary, there remains evidence of continuing segregation in the public school system. The problem, however, is not official segregation implemented by the government. In fact, segregation has continued as a result of private action. While the school boards may have implemented all of the desegregation procedures laid out by the district courts, parents and children have managed to circumvent these measures on their own.

Unlike the desegregation procedures applied by the school boards, the separation of races by private individuals is free from governmental intervention. According to the State Action Doctrine, the Constitution’s protections of individual liberties and its’ requirement for equal protection apply only to the government and private conduct generally does not have to comply with the Constitution.25 Even Title VI of the Civil Rights Act of 1964 does not apply to private action unless the programs and activities are receiving federal funds.26 Thus, as long as segregation is solely promoted, enforced and financed by private individuals, the separation of races within schools will continue.

24 Anderson, 517 F.3d at 303.
Segregating Prom

Private individuals have developed numerous means to execute segregation. One example of private individual’s attempting to enforce segregation includes what is commonly referred to as “white prom.” Segregated proms in the South come in many forms. Some schools have both a “white prom” and a “black prom,” both privately planned and financed. 27 Other schools hold a school-planned prom meant for all students, but parents of white high school students choose to plan and finance a private prom solely for white students. 28

In high schools where there is a “white prom” and a “black prom” the dances generally take place in private venues away from the school. 29 Although school officials deny any affiliation with the activities, the practice emerged following the school’s election not to hold its own school-sponsored prom. 30 Generally these segregated proms result from the parents’ desire to keep races separate at prom, not the students. 31 In fact, students at some of these southern high schools have initiated integrated proms. 32 In Georgia, students made an attempt to integrate prom in 2002. 33 Garcia McCrary, a black student, led her classmates in organizing “Making It Last Forever” – a prom open to all students. 34 Although the attempt was historic, the following years proved that the high school parents (and/or students) were not ready for an integrated prom. 35 The following year, white students voted to have a segregated prom in which black students were not

27 Harrison, supra note 26, at 507
28 Telephone interview with Jesse Graves, Bassfield High School Alum Year 2000 (May 3, 2010).
29 Harrison, supra note 26, at 507
30 Id.
31 PROM NIGHT IN MISSISSIPPI (RTM Productions 2008).
32 Harrison, supra note 26, at 507
33 Id.
34 Id.
35 Id.
invited. Some counties have felt pressure from media as the segregated proms have drawn nation-wide attention. Faced with a negative image, some counties have taken steps toward promoting integration. One approach school boards have taken is to assure a school-sponsored prom. At first glance, a school-sponsored dance would appear to be a good solution to segregated proms. However, initiating a school-sponsored prom does not prohibit parents from instigating a separate, private prom - exclusively for one race.

In Bassfield, Mississippi, white students attending Bassfield High School have the choice between attending the school-sponsored prom or the “white prom” held at a hotel. The school-sponsored prom at Bassfield was commonly referred to as the “black prom.” According to Jesse Graves, a former student at Bassfield High School, black high school students did not attend the “white prom.” Charleston High School in Mississippi is another example of a school that has a school-sponsored prom and a privately held “white prom.” Charleston High School has 415 students, 70% of the students are black and 30% are white. Prior to 2008, Charleston High School had separate proms for white students and for black students. In 1997, Morgan Freeman, the actor, offered to pay for prom at Charleston High School, as long as it was integrated. The school did not respond. Morgan Freeman made a

36 Harrison, supra note 26, at 508.
37 Id.
38 Id.
39 Id.
40 Telephone interview with Jesse Graves, supra note 28.
41 Id.
42 Id.
43 PROM NIGHT IN MISSISSIPPI, supra note 31.
44 Id.
45 Id.
46 PROM NIGHT IN MISSISSIPPI, supra note 31.
second attempt in 2008 to integrate the prom at Charleston High School.\textsuperscript{48} The students of Charleston High School maintained that they wanted an integrated prom and that their parents were the reason for the segregated proms.\textsuperscript{49} However, as made evident by the documentary,\textit{ Prom Night In Mississippi}, some students were still opposed to an integrated prom.\textsuperscript{50}

Despite efforts made by students and faculty at Charleston High School, parents of white students planned and executed a “white prom” in which black students were not allowed to attend.\textsuperscript{51} White students and their parents opposing integration posited several theories as to why integration was wrong, including: declaring that integrating races would cause races to lose their individuality, and the fear of a white daughter having a “mixed” baby.\textsuperscript{52} As to the prom, specifically, one white student questioned the risk of drugs being introduced at an integrated prom.\textsuperscript{53}

\textbf{District Hopping}

In addition to the segregation of prom, private individuals have avoided integration by contriving ways to segregate the schools themselves. In Bassfield, Mississippi, parents can circumvent the school district they live in by declaring their children live with a relative who resides in a more favorable district.\textsuperscript{54} Parents of white students living in Bassfield, Mississippi consistently avoid sending their children to Bassfield High School.\textsuperscript{55} Bassfield High School is predominately composed of black

\begin{itemize}
\item \textsuperscript{47} Id.
\item \textsuperscript{48} Id.
\item \textsuperscript{49} Id.
\item \textsuperscript{50} Id.
\item \textsuperscript{51} Id.
\item \textsuperscript{52} Id.
\item \textsuperscript{53} Id.
\item \textsuperscript{54} Telephone interview with Jesse Graves, supra note 28.
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\end{itemize}
students, with 310 black students and 96 white students. Instead of sending their children to Bassfield High School, parents of white students tell officials that their children live in Seminary Attendance Center’s district. The students will even stay with their relatives in order to give the impression that they live in the district. Seminary Attendance Center is predominately composed of white students with 104 black students and 1,033 white students. The question remains as to whether the school districts are aware of the students hopping districts. If school districts are aware of students dodging their district for one more “favorable” then those districts are promoting segregation by inaction.

**Official Inaction is Promoting Segregation**

Although the segregated proms are private and the district hopping is pursued by parents not school officials, the inaction of the schools amounts to indirect endorsement of such activities. The inaction is more suspicious in schools that decline to hold a school-sponsored prom altogether. While school officials may have legitimate reasons, such as financial restraints for refusing to sponsor a prom, history proves otherwise. For example, in Johnson County, Georgia, older residents recalled that white prom was school-sponsored in the days before public schools were integrated in the late 1960s. Many schools in the South, including Georgia and Louisiana ceased to sponsor a school

57 Telephone interview with Jesse Graves, supra note 28.
58 Id.
59 SchoolTree.org, supra note 56.
60 Harrison, supra note 26, at 512.
61 Id.
62 Id.
63 Id.
prom once the schools integrated in the 1970s. Thus, one can conclusively draw that following Brown, schools in the South stopped sponsoring proms in order to prohibit an integrated prom through inaction.

Although harder to detect, parents who enter their children into schools outside of their districts are working against desegregation efforts. Despite desegregation procedures, if parents are dodging efforts by district hopping, segregation will continue to exist. Even more disturbing, without the presence of desegregation procedures, parents will find it even easier to avoid certain schools in favor of schools that are predominately white.

Conclusion

Although school boards and districts may facially satisfy the desegregation requirements mandated by district courts, courts must consider the segregation efforts initiated by private individuals. Although private individuals are protected from Constitutional implications deriving from the Equal Protection Clause of the 14th Amendment, their conduct is uncomfortably near the promotion of official segregation. Thus, in determining whether a school has reached unitary status, courts must consider the action of private individuals as well as the inaction of schools as to individuals’ conduct. Otherwise, through inaction, school boards and districts are allowing segregation to be carried out by those who can: the parents.

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64 Harrison, supra note 26, at 512.