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ISSUES IN SCHOOL DESEGREGATION

By: Peter E. Pflaum

1. The Recent Events in Omaha

The current school desegregation crisis in Omaha makes a review of the issues in school desegregation especially relevant. Desegregation first referred to the dismantling of the southern dual school systems. The general principle is that the racial identity of schools should be removed. There should not be 'black' schools or 'white' schools, just schools. Since 1964, the courts have acted not only where the segregation was 'de jure' (by law) but in cases of 'de facto' segregation (where segregation existed without clear action on the part of the state). The argument has been that in the north as well as the south, school boards and other local agencies have acted to maintain separate schools.

The Department of Justice has found racially discriminatory practices in the Omaha School system. The allegations are:

"...while the Board of Education professes to adhere to a neighborhood school policy, it has deviated from this policy in certain instances resulting in racial segregation."

"We have concluded that certain school board policies do deviate from the neighborhood school concept by permitting white students in the predominantly black schools to attend schools elsewhere in the city. At the same time, these policies have served to contain black students within predominantly black schools."

At the Junior high school level the Justice Department noted "...that the school district discontinued Technical Junior High School at the start of the 1972-1973 school year...has perpetuated segregation for many black students at the Junior high level. In addition, the Martin Luther King Middle School, which will supposedly absorb many students who would have attended Technical Junior High School in the past, will continue to perpetuate segregation for black students in the area..."

At the elementary level, "...Franklin, Clifton Hill and Saratoga Elementary Schools owe their racial character, in part, to official board policies and practices which have permitted white students in the vicinity of these schools to attend elementary schools elsewhere in the city. These policies and practices include the utilization and placement of portables, and granting of special transfers and the manipulation of grade structures..."

The Department of Justice concluded by stating that: "It is the opinion of the Assistant Attorney General that these practices by the Omaha Board of Education fail to conform
the constitutional duty of school officials to take affirmative
measures to remove the effects of de jure segregation. In
Brown v. Board of School Board of New Kent County,7 the Court held that the
mere existence of a freedom-of-choice plan was insufficient.8
School boards with assistance from the Department of Health,
Education, and Welfare, have worked on desegregation problems
in Florida; North Carolina; and Tennessee. Under the
jurisdiction of the Commission on Civil Rights, Racial
Developments in Education, 1962-1963, a study of desegregation
plans utilizing school attendance zones, pairing of
students, busing of pupils, etc. In addition to rejecting "freedom of
choice," circuit courts also prohibited the use of attendance
zones based on racially identified neighborhood lines which
produced little desegregation.

In Swann v. Charlotte-Mecklenburg Board of Education, 
[402 U. S. 7, 1971], the Supreme Court for the first time
considered the type of remedial action needed to create a
equal educational system. The Supreme Court reaffirmed the
duty of school boards to take affirmative measures to eliminate
dual school systems including:

1. Racial quotas, the Court ruled, may be used as part of the
remedial school desegregation program.
2. The courts may impose district boundaries if they are not
in compliance with the law; in such cases the district courts have
the authority to order the creation of one school district.
3. School attendance zones may be redrawn in order to
eliminate segregated schools.
4. In the United States v. Jefferson, 437 F. 2d. 836 (5th
Cir. 1971), the Court held that the district court had the
authority to order the establishment of a school system
in Wolff, 309 U. S. 235 (1940), and a "de facto" system
resulting from the actions of the school board.
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II. School Desegregation - The Past Five Years
The 1964 Supreme Court ruling that school segregation
sanctioned by State statutes violated the Equal Protection
Clause of the 14th Amendment9 This was not the end, but rather
the beginning of judicial efforts to eliminate dual school systems.
In a series of landmark decisions, the courts have
recognize the existence of de jure segregation
and made the decision of the Court to
reform the school system.

A. Duty to Take Affirmative Action to
Desegregate Schools
In United States v. Jefferson County Board of Education4
the U.S. Court of Appeals for the Fifth Circuit ruled that a State
has an affirmative duty to eliminate the effects of de jure
and state imposed school segregation. The Court upheld HEW
guidelines as a constitutional

In 1968, the Supreme Court issued its first significant
school desegregation ruling involving the procedures used to
implement Brown's desegregation requirement. In Green v.
School Board of New Kent County,5 the Court held that the
mere existence of a freedom-of-choice plan was insufficient.6

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Keyes brought suit under 42 U.S.C. 1983 challenging the Denver school board's policy of "de jure" segregation, and the Court identified a ususual joint characteristic of "de facto" segregation, e.g., site selection, attendance, school construction, assignment of teachers and the like, had been willfully used by the board to segregate and were therefore "de jure." In Keyes, the Court has defined a school board's duty to overcome racial imbalance which is not the direct result of official racial discrimination.

III. The Facts of Omaha's Case

The Court's decision on the Omaha case will be influenced by how well each side presents its case. The issues involve the opening of the Martin Luther King School as a black school and the following schools:

- Technical High School*: 900 students 96% black
- Mann Junior High School: 1,000 students 58% black
- Conestoga Elementary: 470 students 86% black
- Duild Hill Elementary: 413 students 88% black
- Clifford Hill Elementary*: 985 students 92% black
- Fairley Elementary: 60 students 100% black
- Franklin Elementary*: 1,050 students 100% black
- Kellem Elementary: 611 students 100% black
- Kennedy Elementary: 478 students 100% black
- Lake Elementary: 250 students 46% black
- Lohrop Elementary: 771 students 63% black
- Monmouth Park Elementary: 475 students 61% black
- Saratoga Elementary*: 679 students 40% black

Out of 63,000 students in the Omaha Public Schools, about 10 percent are blacks. Ten elementary schools out of 75 are predominantly black schools. Of the 53 schools, 46 are black schools with less than 10 percent of the student body. In these schools, there are 11 elementary schools that could be considered integrated (balanced) from 10 to 46 percent black. Forty-five elementary schools have 10 or less black students. This could be considered a prima facie case of "de facto" segregation.

IV. Education and Segregation

David K. Cohen, in his chapter on school segregation and desegregation, listed three primary issues in school desegregation. First, the educational reasons for integration, "Why can't education in Negro schools be improved?" The second involved housing and integration, "How can black schools be improved?" The third was the political dimension of this painful social change was questioned. The third question asked if integration in the public school system would destroy that institution; would white parents send their children to integrated schools?

On the educational issues, the Civil Rights Commission study, Racial Isolation in the Public Schools, using data provided by James Coleman's study, Equality of Educational Opportunity, generally referred to as the Coleman Report, suggested that racial or socioeconomic isolation had a detrimental effect educationally.

As in many of these questions involving race, economics, and education, there is, as Gunnar Myrdal in An American Dilemma, describes so well, "a circular causation." The cycle of poverty, race boxes, segregation, education, and political ineffectiveness could be as easily broken through change in the public school system as anywhere else. Sociologists argue that in American society, the school is the most powerful social system outside of the family. Since the evidence has tended to suggest that a large number of Americans, if not a majority, currently hold negative attitudes about members of the opposite race, a truly integrated school system, or at least attitudes, improve educational opportunities, and allow for a future development of a more totally integrated society. Negroes would be affected by their educational experiences and their desegregation, or live in an integrated society. The U.S. Civil Rights Commission Report, however, gave evidence that high-status, college-educated high-income Negroes who attended segregated schools were less likely to want to live in integrated neighborhoods than lower-status, less educated Negroes who attended integrated schools. The willingness of whites to accept Negroes in their communities undoubtedly is affected by their school experiences.

On the third issue, it is probably true that Omaha education faces a crisis. Possible community unrest and student rebellion form part of this crisis. The public in education is the result of a number of complex causes, and desegregation can aggravate an already difficult situation. A variety of case studies (see, for example, Crain, The Politics of School Desegregation) showed that strong moral leadership at the local level, in most circumstances, would allow public officials to pursue a desegregation plan without major increased disruption of the school system.

"One vital element in a smooth transition from segregation to desegregation has been the determination of the school board and administration to carry out the policies of the desegregation plan and to do so firmly and unswervingly. Another has been the support of the news media, local officials, and civic leaders. A third has been the steps taken to assure that responsibility for desegregation does not fall disproportionately on one part of the community, but that all share it equally. A fourth has materialized by closely involving parents as active participants in desegregation, by keeping them thoroughly informed by active alternation of procedures to assure firm but fair and impartial discipline of all students, and their full participation in school activities.

The lack of quantitative methods for desegregating schools has been an important factor in the continuation of the courts' intervention in school desegregation. This is because of the large volume of data that had been or would be generated by a desegregating system. Secondly, the use of quantitative methods for desegregating school has been to develop Orange County, Florida. In this case, the schools were racially balanced without increased cost of transport. The method allowed the desegregation issue to come under scientific examination.


On Crain, Racial Isolation in the Public Schools, p. 100-113.


received $6,285,826 of the GRS funds allocated to the county area.
The share of GRS funds going to Douglas County area represents 23 percent of the total amount allocated to all local
governments. Yet the Douglas County area has jurisdiction over 26
percent of the State's population. This discrepancy suggests
the importance of the other two elements in the distribution
formula (tax effort and relative per capita income). An important
provision of the GRS law allows the State legislature to change
the weights given to each of the elements in the formula for
allocating funds within the state. This can be done once during
the first five-year period of revenue sharing.

Priority Expenditures
Local governments have greater flexibility in the use of
GRS funds than with categorical or block grant funding.2
However, GRS funds must be spent on a specified list of high
priority items. These include ordinary and necessary maintenance
and operating expenses for public safety, environmental
protection, public transportation, health, recreation, social
services for the aged and poor, libraries, and financial
administration as well as for ordinary and necessary capital
expenditures. Local governments are allowed to determine how
much of the funds are to be spent on any particular high priority
item.

The funds going directly to the State are not restricted to
the categories listed for local governments. However, there is a
limitation which applies to the states, as state governments are
required to maintain the same level of aid to local governments
as they had during the fiscal year 1972. Under this "maintenance of
effort" provision, if a state reduces its aid to localities below the
1972 level, the Treasury Department will reduce the state's share
of revenue sharing funds by the same amount.

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2Traditionally, federal categorical grants and block grants were
made for specific purposes with specific restrictions placed upon them by
Congress.

TABLE I
ALLOCATED, COMMITTED OR PROPOSED USE OF GENERAL REVENUE SHARING FUNDS BY CATEGORY FOR NEBRASKA, DOUGLAS COUNTY AND THE CITY OF OMAHA: JANUARY 1, 1972 TO JUNE 30, 1973

<table>
<thead>
<tr>
<th>Category</th>
<th>Nebraska State Government</th>
<th>City of Omaha</th>
<th>Douglas County Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Ordinary and necessary maintenance and operating expenses for:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Public Safety (including law-enforcement, fire protection, and building code-enforcement)</td>
<td>$-</td>
<td>6,100,875</td>
<td>$-</td>
</tr>
<tr>
<td>2. Environmental Protection (including sewage disposal, sanitation, and pollution abatement)</td>
<td>$-</td>
<td>2,091,951</td>
<td>$-</td>
</tr>
<tr>
<td>3. Public Transportation (including transit systems and streets and roads)</td>
<td>$-</td>
<td>2,975,000</td>
<td>$-</td>
</tr>
<tr>
<td>4. Health</td>
<td>$-</td>
<td>300,000</td>
<td>$-</td>
</tr>
<tr>
<td>5. Recreation</td>
<td>$-</td>
<td>50,000</td>
<td>$-</td>
</tr>
<tr>
<td>6. Libraries</td>
<td>$-</td>
<td>1,068,000</td>
<td>$-</td>
</tr>
<tr>
<td>7. Social Services for the Poor and Aged</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
<tr>
<td>8. Financial Administration</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
</tbody>
</table>

B. Ordinary and necessary capital expenditures authorized by law: | $- | 2,150,000 |

C. Allocation of funds received by Nebraska State Government:2 |
Education | $19,871,418 |
| Not allocated, committed or proposed | $- |

Federal allocation to local governments: $10,871,418
Federal allocation to local governments: $5,395,826

1Includes $1,000,000 reserved for library site acquisition and demolition.
2Includes $2,000,000 allocated to liquidate mortgage on data processing equipment.
3This category is not an option available to local governments. Source: Information provided by state and local governmental officials.
Allocated, Committed and Proposed Use of GRS Funds

Table I reports the use of general revenue sharing funds by category for the State Government, Douglas County, and the City of Omaha. All funds received by the State Government ($19,871,418) were allocated to education. The City of Omaha has allocated 47 percent of the funds to public transportation and another 33 percent to environmental protection activities. Douglas County has allocated 77 percent of its funds to capital expenditures. During the first three entitlement periods there was a noticeable lack of funds allocated to social services for the poor and aged.

Community Input

The “Plan” for the use of revenue sharing funds is where a community can provide input into the allocation process. Under the law, each state and locality which expects to receive the funds must submit a report to the Secretary of the Treasury which spells out the amounts and purposes for which the funds will be used. The plan must be submitted for each entitlement period. At the end of each entitlement period, the governmental unit receiving funds must submit a report to the Secretary of the Treasury detailing actual use of the funds. Both the report showing the planned use of GRS funds and that showing actual GRS fund use must be published in a newspaper of general circulation within the governmental unit.

Through the use of special public hearings and testimony in city council and county board meetings, the community can be brought into the process of establishing needs and priorities in the use of GRS funds.

Summary

At the moment, revenue sharing is only a five-year program. At the end of five years, it could be vastly expanded or scrapped entirely. There is no question that Congress will be watching to see how the program works, how funds are used, how community input is sought and utilized, and whether state and local governments are indeed more responsive to the needs of their residents.