

**National Commission on Fair Housing and Equal Opportunity  
Presents**

**“Still Separate and Unequal: A Public Hearing on the State of Fair Housing in  
America”**

September 22, 2008

Boston, Massachusetts

Panel 1: “More than housing alone: The impact of segregated housing on the quality of  
life in communities”

Testimony

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**“THE INTERSECTION BETWEEN HOUSING AND SCHOOL SEGREGATION”**

## 1. Introduction

For too long as a society, and specifically within the community of civil rights activists, we have failed to properly acknowledge the close connection between segregation in housing and segregation in schools. As a result, we have limited the efficacy of desegregation policies in both. However, the new millennium seems to have brought with it new insight. Finally, 40 years after the enactment of the historic Fair Housing Act, we seem to have come to an *academic* consensus that the issues of segregation in housing and segregation in schools are intrinsically linked, and that it is not possible to solve one without also addressing the other. The Appendix of my testimony contains a comprehensive bibliography of the significant legal and other scholarship on point. After reading commentary on the subject, the following conclusions seem typical:

“[A]s long as housing is not fair to all Americans and residential integration stymied, there can be no reasonable expectation that school integration will naturally follow.”<sup>1</sup>

“[S]chool desegregation should have occurred hand in hand with several other bold attempts to change segregation and racial inequality, especially in housing and employment.”<sup>2</sup>

“Decisions about subsidized housing should include a serious assessment of educational opportunities for the children forced by poverty to live there.”<sup>3</sup>

“The studies of the *Gautreaux* program suggest that residential integration can contribute significantly to . . . aims of improving employment, education, and social integration of low-income blacks.”<sup>4</sup>

However, I was disappointed to discover that despite this consensus as to the existence of such a connection, very little detailed research in the form of quantitative studies has been carried out. Further, although this view is prevalent amongst commentators and academics, it has received very little judicial or political recognition. Even further, we civil rights and other public interest lawyers have not sufficiently raised the issue in either school desegregation or housing discrimination cases.

As such, the subject of my testimony today will be firstly the need to adopt policies which address segregation in housing and in education as a single combined issue, and secondly, the failure thus far to both explore the link between housing and education and

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<sup>1</sup> Brief of Amici Curiae Housing Scholars and Research & Advocacy Organizations in Support of Respondents at 23-24, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738 (2007) (Nos. 05-908, 05-915), available at <http://www.prrac.org/pdf/HousingScholarsBrief.pdf>.

<sup>2</sup> Amy Stuart Wells et al., *Tackling Racial Segregation One Policy at a Time: Why School Desegregation Only Went So Far*, 107 TCHRS. C. REC. 2141, 2143 (2005).

<sup>3</sup> GARY ORFIELD & NANCY MCARDLE, CIVIL RIGHTS PROJECT OF HARVARD UNIVERSITY, *THE VICIOUS CYCLE: SEGREGATED HOUSING, SCHOOLS AND INTERGENERATIONAL INEQUALITY* 13 (2006), available at [http://www.jchs.harvard.edu/publications/communitydevelopment/w06-4\\_orfield.pdf](http://www.jchs.harvard.edu/publications/communitydevelopment/w06-4_orfield.pdf).

<sup>4</sup> James E. Rosenbaum et al., *Can the Kerner Commission's Housing Strategy Improve Employment, Education, and Social Integration for Low-Income Blacks?*, 71 N.C.L. REV. 1519, 1552-53 (1993).

pursue policies which exploit this connection to bring about desegregation and equality.

## **2. The need to recognize the link between segregation in housing and segregation in schools**

Clearly the desegregation of housing and communities has an essential role in furthering social equality in its own right, something on which I am sure you will hear much evidence from the other contributors to this report. However, the positive impact fair and desegregated housing can have on equality in other aspects of society is often overlooked. In particular, I am interested in the constructive influence desegregation policies in housing can have both directly and indirectly on desegregation and the quality of education in our schools.

The effect of pursuing desegregation in education without also addressing segregation in housing is to limit the effect of policies aimed at the desegregation of schools. Even where pointed efforts have been made to desegregate schools, such as those undertaken in the 1970's to aggressively implement the commands of *Brown v. Board of Education*, 394 U.S. 294 (1955), in both former de jure and de facto segregated districts, those children who benefited from racial integration in the classroom were still subject to segregation when they left the classroom and returned to homes in districts populated by majority low-income, ethnic minority families.

A failure to complement policies aimed at desegregation in schools with similar policies attached to housing is detrimental to the success of desegregation in schools. However, housing policies can be used not only as a complement to education policies, but also as an indirect method of promoting desegregation in education in the absence of specific policies aimed at that goal. This is particularly relevant in today's climate of judicial and political opposition to direct attempts to desegregate schools.<sup>5</sup> This point is articulated by Gary Orfield and Nancy McArdle when they note that "[i]n the absence of effective school desegregation policies, location is destiny, and segregated housing for families, reinforced by differential use of private schools, produces education that is starkly polarized."<sup>6</sup>

The policy of neighborhood schools in particular enforces the link between segregation in housing and education. By allocating students to schools based on geography of residence, the racial segregation of communities is directly reflected in the racial composition of local schools. In the absence of specific desegregation plans which allocate students to schools outside their municipalities, parents are often denied the opportunity to send their children to schools outside the local area. The effect of this "spatial constraint,"<sup>7</sup> which limits desegregation in education, indicates a need to address the other variables in the neighborhood schools equation, most obviously that of the neighborhoods themselves. For this reason, diversification of the local community

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<sup>5</sup> See, for example, the decision of the Supreme Court in *Parents Involved in Community Schools v. Seattle School District No.1* and *Meredith v. Jefferson County Board of Education*, 127 S. Ct 2738 (2007).

<sup>6</sup> Orfield & McArdle, *supra* note 3, at 4-5.

<sup>7</sup> *Id.* at 50.

through positive attempts to desegregate housing is crucial in breaking down the segregation of schools.

Throughout the United States, the majority of funding for public schools is generated through revenue from local property taxes. Because ethnic minority students tend to be housed in areas with the lowest property values (which consequently generate less revenue in property taxes), schools with high percentages of ethnic minority students are notably more poorly funded than predominantly white schools. For example, the State of Connecticut – with just 29% low-income student enrollment – spends up to \$11,694 per year per student.<sup>8</sup> In contrast, the state of Mississippi, with 75% low-income enrollment, spends less than \$5,635 per student.<sup>9</sup> This is despite both states levying property taxes at the same rate. In addition, because parents who reside in property-poor districts tend to have lower, less steady incomes than those in property-rich districts, schools in those areas generally receive fewer voluntary contributions of money and other resources, further increasing the funding gap. The system of funding schools through property taxes has a dual effect in that it not only means that predominantly minority schools often lack the resources to properly provide for their students, but also that because property-rich, predominantly white areas *are* able to generate much greater funding for their schools, the quality of education ethnic minority students receive *relative* to their white counterparts is noticeably worse.<sup>10</sup> This example demonstrates that segregated housing not only increases segregation in schools, but also intensifies the negative impact of that segregation.

In addition to the evidence thus far submitted that fair and affordable housing is a necessary element of an effective campaign against segregation and inequality in schools, an integrated housing market cannot alone effectively increase overall racial equality if it is not paired with an integrated schooling system. There is of course a desperate need to ensure that people are housed, and it is undoubtedly true that a strong, racially integrated local environment is crucial in developing aspirations, economic potential and a feeling of occupying a significant place in the world. However, without accompanying educational desegregation, many students will never be provided with the tools to realize the potential created by integrated housing policies.

The effect of ignoring policies that may increase equality is particularly harmful in education, given the huge role education has in increasing social mobility and in many cases dictating the scope of opportunity to which an individual is later exposed. As Orfield and McArdle note, “severe location-based inequality of educational opportunity . . . is a devastating threat in a society in which acquisition of equal or better education is one of the only ways to achieve more equal outcomes in an economy where employment and earnings are more and more tightly linked to educational attainment in the post-

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<sup>8</sup> SOUTHERN EDUCATION FOUNDATION, A NEW MAJORITY: LOW INCOME STUDENTS IN THE SOUTH’S PUBLIC SCHOOLS 9, 12 (2007), *available* at <http://www.sefatl.org/pdf/A%20New%20Majority%20Report-Final.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Though the school reform movement for both equal and adequate funding of public education in state courts has been largely successful in the past 30 years, none of that effort addressed segregated housing.

industrial era.”<sup>11</sup> Due to both the consequences of failing to provide every child with a fair and equal education, and the apparent link between education and housing, there is an added imperative to act when it comes to addressing issues of segregation in housing.

Finally, as a result of the restrictions placed on voluntary school diversity and integration plans using race conscious means by the United States Supreme Court in *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S. Ct. 2738 (2007), it becomes even more critical to combine housing and school integration strategies.

### **3. The failure to address segregation in schools and housing together – who is responsible?**

Although academic opinion has all but accepted the proposition that there exists a link between segregation in housing and segregation in schools, this has not translated into action. It is important for the future of civil rights advocacy that we examine how we reached this stalemate, and what can be done at this moment in history to ensure that we take the necessary steps to move forward. So who, or what, is responsible for the failure to address the link between segregation in housing and in education?

At the foundation of the problem, it seems, is the dearth of detailed and pointed research available on the subject. Although there is no shortage of persons willing to acknowledge the link as a matter of fact, when I came to prepare my testimony for this hearing I was shocked to discover the gaping hole in quantitative academic studies into this link.<sup>12</sup> The reason for this lack of focus on a potentially groundbreaking development in the fight to create greater racial equality is something of a mystery. I can only surmise that conducting research which synthesizes data from both education *and* housing desegregation policies, and the magnitude of the task of collecting such data is simply too overwhelming, and that there exists a general sentiment that examining segregation in *either* education *or* housing is a more realistic and manageable task. If this is the case, I would urge the research community and legal advocates to come together to ensure that the resources to enable this vital research are made available. Without quantitative data to demonstrate the link between segregation in housing and in education, it will be immeasurably more difficult to convince policy-makers and legislators to consider the two issues side by side when deciding how to combat segregation and inequality in either area. Without specific research into the exact nature, extent and qualities of the connection between fair housing and equality in education, the task of constructing effective policies to address both issues in combination is also obstructed.

The next group of people at whose feet the blame for inaction must partially lie is the American judiciary. In cases such as *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), and *Keyes v. School District No. 1*, 413 U.S. 189 (1973), the Supreme Court initially accepted the role that segregated schools played in

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<sup>11</sup> Orfield & McArdle, *supra* note 3, at 4.

<sup>12</sup> “The Vicious Cycle: Segregated Housing, Schools and Intergenerational Inequality” is an example of an exception, as it does include quantitative analysis linking housing segregation to school segregation and achievement. However, the report covers only the Boston area. See Orfield & McArdle, *supra* note 3.

contributing to residential segregation. As the unanimous Supreme Court spelled out in *Swann*:

People gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools therefore may influence the patterns of residential development of a metropolitan area and have an important impact on the composition of inner-city schools.

In the past choices in this respect have been used as a potent weapon for creating and maintaining a state-segregated school system. In addition to the classic example of building schools specifically intended for Negro or white students, school authorities have sometimes, since *Brown*, closed schools which were likely to become racially mixed through changes in neighborhood residential patterns. This was sometimes accompanied by building new schools in the areas of white suburban expansion farthest from Negro population centers in order to maintain the separation of the races with a minimum departure from the principles of “neighborhood zoning.” Such a policy does more than simply influence the short-run composition of a new school. It may well promote segregated residential patterns which, when combined with “neighborhood zoning” further lock the school system into the mold of the separation of the races.

*Id.* at 20-21.

Thereafter, lower courts often recognized the role residential segregation played in a school district’s liability for school segregation. For example in *United States v. Texas Education Agency (Austin Independent School District)*, 564 F.2d 162, 169 (*Austin III*) decision:

It has been the AISD’s policy to assign students to the schools closest to their homes. The City of Austin, with the exception of the strip between East and West Austin, has ethnically segregated housing patterns. Hence, the natural, foreseeable, and inevitable result of the AISD’s student assignment policy has been segregated schools throughout most of the city. . . . The inference is inescapable; the AISD has intended by its continued use of the neighbourhood assignment policy to maintain segregated schools in East and West Austin.

Similarly, in determining the appropriate remedies, the Supreme Court in *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 97 S. Ct. 2766, 53 L. Ed. 2d 851 (1977) held that district courts “must determine how much incremental segregative effect these violations had on the [\*\*38] racial distribution of the . . . school population as presently constituted, when that distribution is compared to what it would have been in the absence of such constitutional violations.” The Court in *Austin III*, again emphasized the important relationship of school and housing segregation:

Assessing the incremental segregative impact of a school board's

discriminatory actions and policies is not an easy task. The district court, on remand, must take into account that people gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods. *Swann v. Charlotte-Mecklenburg Board of Education*, 1971, 402 U.S. 1, 20-21, 91 S. Ct. 1267, 1278, 28 L. Ed. 2d 554. [\*\*39] The burden of demonstrating that the residential concentration of minorities in East Austin is unrelated to the AISD's segregative school policies is to be shouldered by the school board. See *Keyes v. School District No. 1, Denver, Colorado*, 1973, 413 U.S. 189 at 211 n.17, 93 S. Ct. 2686, 37 L. Ed. 2d 548.

Since these early cases, however, the Court has back-peddled on its earlier emphasis of this link. For example, the majority opinion in the 1974 case of *Milliken v. Bradley*, 418 U.S. 717 (1974) rejecting the requirement of a metropolitan school desegregation plan ordered by the lower courts, did not even mention this link in discussing the requirement of showing an interdistrict violation.<sup>13</sup>

In recent years, the Supreme Court and lower courts have changed their focus from examining the causes of segregation and requiring desegregation plans to what is required to establish a unitary school system.<sup>14</sup> The result of this change of focus has been findings of unitariness in many school districts, followed by a return to neighborhood schools. In light of the continued, intractable housing segregation, this has inevitably caused increased school segregation. Moreover, in approving the return to neighborhood schools, courts have no longer noted the original emphasis on the link between school and housing segregation.

The present judicial reluctance to acknowledge that unfair housing policies can often give rise to or perpetuate segregation in education is particularly important given the acknowledgement in *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996), that a state could be responsible for de facto segregation arising out of its policies. This recognition is important because de facto segregation in housing can, as we have seen, lead to de facto segregation in schools.

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<sup>13</sup> In his concurring opinion, Justice Stewart did take note of the link: "This is not to say, however, that an interdistrict remedy of the sort approved by the Court of Appeals would not be proper, or even necessary, in other factual situations. Were it to be shown, for example, that state officials had contributed to the separation of the races by drawing or redrawing school district lines, *see Haney v. County Board of Education of Sevier County*, 429 F.2d 364; *cf. Wright v. Council of the City of Emporia*, 407 U.S. 451; *United States v. Scotland Neck Board of Education*, 407 U.S. 484; by transfer of school units between districts, *United States v. Texas*, 321 F.Supp. 1043, *aff'd*, 447 F.2d 441; *Turner v. Warren County Board of Education*, 313 F.Supp. 380; **or by purposeful, racially discriminatory use of state housing or zoning laws**, then a decree calling for transfer of pupils across district lines or for restructuring of district lines might well be appropriate." 418 U.S. at 755 (emphasis added)

<sup>14</sup> See eg *Freeman v. Pitts*, 503 U.S. 467, 493 (U.S. 1992) and *Dowell v. Board of Education*, 396 U.S. 269 (U.S. 1969)

In addition to reticence on the part of the judiciary, it is also necessary to acknowledge some degree of responsibility on the part of the civil rights legal community. Although judges have been reluctant to acknowledge that failures to adequately protect against segregation in housing can impact the ability of individuals to access their right to equality in education, we as lawyers have a responsibility to bring these cases before the courts, and we have not done so adequately. I was one of the lawyers in the landmark *Sheff v. O'Neill* case in Connecticut that established a fundamental right to education free of extreme racial isolation under the Connecticut Constitution based upon proof of de facto segregation. In 1989, we set out to practice what I preach today.

The complaint in the *Sheff* case essentially raised claims on several theories against racial and ethnic discrimination and high concentrations of poverty as a denial of an equal education opportunity. In addition, we claimed that certain state action in conjunction with private action caused segregation in housing and contributed to the illegal segregation in education. As the pretrial discovery dragged on for several years, the state convinced the court, perhaps with good reason, that it needed considerably more time to respond to the plaintiffs' discovery demands. After nearly three years of pretrial motions and discovery in the case which further pushed back the possibility of securing a trial date, we were faced with a Hobson's choice: either continue the housing claim with additional time for discovery and put off a trial on the education segregation issues, or drop the housing claim to gain an early trial date. I don't regret that we made a very tough strategic decision to jettison the housing claim and go to court due to a variety of tactical considerations. However, I feel we have been remiss in not returning to prove the persuasive allegations of the link between housing and school segregation in Connecticut and elsewhere. I am therefore guilty of the failures that I criticize today, but we must, on the fortieth anniversary of the Fair Housing Act, find a way to use fair housing laws to affirmatively further school integration.

#### **4. The Yonkers Exception – A Successful Housing and School Desegregation Case**

The most successful *exception* to my thesis that school and housing segregation cases have been seldom commenced, and rarely successfully, is the case of *Spallone v. United States*, 493 U.S. 265 (1990). The United States and the National Association for the Advancement of Colored People (NAACP) successfully sued the City of Yonkers, New York and the Yonkers School Board for intentionally engaging in housing and school segregation for 30 years. The courts found that Yonkers had disproportionately restricted subsidized housing projects to racially impacted neighborhoods of the city and located schools within the same close proximity. This was the first and virtually the last case in which racial segregation charges were brought against housing and school officials in the same lawsuit.

The courts ultimately imposed a joint housing and school remedy to disperse the subsidized affordable housing into more predominantly white neighborhoods to promote both housing and school integration, and there are other factors that make this a unique case. First, rarely do you find a city in which school and housing officials, with the



support of the municipal governing body, blatantly maintain segregated housing and thus schools in overwhelmingly Black and Latino neighborhoods. Second, for a de facto school segregation case, the plaintiffs U.S. Department of Justice and the NAACP discovered ample proof of intent to satisfy legal requirements for liability. Although the courts later added the state of New York for the remedies, these favorable facts and supporting federal law at the time with one single governing body are rarely available today.

## **5. Conclusion**

Forty years after the passage of the FHA in 1968, and over 50 years after *Brown v. Board of Education*, we are still fighting injustices in both education and housing. We as a community of civil rights advocates and academics have a great need to divine the reason for our failure to properly investigate the housing/education connection, and to ensure now that resources are made available so that this research does not fall by the wayside for another 40 years. What we have been missing in all these years of struggle may be the insight to bring together both housing and education issues and fight them with collective policies. If we fail to achieve greater equality in schools and housing in the next 40 years, it must not be because we did not manage to collect data to convince politicians and judges that a collective approach to housing and school segregation is necessary. If in another 40 years there is still no judicial acknowledgement of the repercussions that segregated housing can have on education, it cannot be because we did not bring enough cases before the courts that forced the question.

In closing, I urge this distinguished National Commission on Fair Housing and Equal Opportunity to make the following observations and recommendations:

- 1) Housing and school segregation are intrinsically linked. Residential housing patterns with disproportionate concentrations of racial and ethnic groups are the leading cause of school segregation.
- 2) Federal, state and local governments should take special measures to eliminate all forms of racial and ethnic segregation in housing and schools.
- 3) Scholars should be provided with incentives to research and publish articles on the exact nature, extent and qualities of the connection between fair housing and equality in education, and to propose public policies to address both issues in combination.
- 4) Legal advocates should put theory to practice with creative legal strategies to mount challenges in the courts to address the intrinsic link between housing and school segregation.

## **APPENDIX**

### **National Commission on Fair Housing and Equal Opportunity Presents**

#### **“Still Separate and Unequal: A Public Hearing on the State of Fair Housing in America”**

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