Jefferson County: Integration Through Race-Neutral Means

By Sharon L. Browne

“The purpose of the Equal Protection Clause is to ensure that people are treated as individuals rather than based on the color of their skin.”


By the time the United States Supreme Court finished hearing both arguments, a majority of the justices had signaled that the school districts’ plans to racially balance elementary and secondary schools would not survive.

Background

When Crystal Meredith sought to transfer her five-year-old son, Joshua, from Young Elementary School to Bloom Elementary School, she was told that Joshua’s transfer application was denied solely on the basis of his race—his skin was the wrong color.1 Meredith filed a lawsuit claiming that the racial balancing plan violates the Equal Protection Clause. The lower courts rejected her claim and found that the race-based assignment plan served a compelling state interest and was narrowly tailored to achieve that interest.

Scrutiny of the Race-Based Student Assignment Plan

There is no dispute that Louisville, Kentucky, does an admirable job of educating children and that this important task is properly and best discharged by parents, teachers, and state and local officials. But, when the school district’s actions implicate core constitutional values by assigning students on the basis of race to public schools, they do not receive special dispensation from the dictates of the Equal Protection Clause.

Deference to local school officials on the use of race in public schools is incompatible with the Equal Protection Clause. It has been rejected by the Supreme Court and should not be given credence now, 53 years after Brown v. Board of Education, 347 U.S. 483 (1954). Brown held that state laws that intentionally segregate public school students on the basis of race were unconstitutional. The following year, in Brown II, the Supreme Court declared that the ultimate goal in eliminating de jure segregation is to “achieve a system of determining admission to the public schools on a..."
Many would say that we aspire to live in a color-blind society. Few would say we have reached that aspiration. We have faced both legally mandated segregation and de facto segregation in our public and private spheres. Race consciousness follows us in our law practices, at our churches, and in our relationships. In the context of education, however, race has held special resonance.

Over the past 50 years, the Supreme Court has looked repeatedly at whether and how schools could consider race in admissions and school assignment. See Brown v. Board of Education, 347 U.S. 483, 492-93 (1954); Regents of the University of California v. Bakke, 438 U.S. 265 (1978); Grutter v. Bollinger, 539 U.S. 306 (2003); Gratz v. Bollinger, 539 U.S. 244 (2003). Ironically, in all but Brown, the question was not whether black students could go to school where they wished, but whether white students were improperly being harmed by consideration of race in school admissions.

Despite repeated examination, the question of whether racially explicit school assignment plans may ever be narrowly tailored to meet a compelling state interest has not been resolved in more than 50 years. The Court recently looked at these issues in two cases. See Grutter 539 U.S. at 306; Gratz, 539 U.S. at 244. In Grutter, the Court found that a law school had a compelling interest in diversity and ensuring that a critical mass of minority students was in attendance. At the same time, in Gratz, the Court struck down an undergraduate admissions plan that awarded extra admissions “points” based on race, finding the plan did not meet constitutional muster.

This term, the Supreme Court again looks at the issue of race and education. In Meredith v. Jefferson County, a white plaintiff has challenged Jefferson County (which includes Louisville) Kentucky’s school assignment system. In Jefferson County, the district explicitly uses race in determining which students attend which school, aiming to ensure that each school has more than 15 percent but fewer than 50 percent black students. The plaintiff sued when her child was not admitted to the school of her choice.

The program is popular among the parents of Jefferson County. According to a 2000 University of Kentucky study quoted in Time, more than three-quarters of parents in Jefferson County supported the use of racial guidelines to ensure diversity. See Julie Raw, “When Public Schools Aren’t Color-Blind,” Time, Dec. 4, 2006, at 54–55. That, however, seems less meaningful when one considers how polling in Topeka, Kansas, would have come out on segregation in the early 1950s.

In Parents Involved in Community Schools v. Seattle School District, the plaintiffs, a group of parents who organized themselves as a corporation, challenged a Seattle school district’s high school assignment system. Under that system, students could apply to any high school in the district. If the student’s first choice was over-subscribed, the district used various criteria to determine which students would be assigned to that school. The primary criterion was a sibling in attendance. Race was considered if the school’s racial composition deviated too much from the district’s overall student population. In that case, the district would admit students based on race

Continued on page 14
Seattle School District Plan Violates Equal Protection Clause

BY HARRY KORRELL AND ERIC B. MARTIN

The Seattle School District’s admissions plan operates to deny many students admission to their preferred schools (in a system that otherwise allows students to select any high school in the city) solely because of their skin color. This is a racial classification, and any racial classification, by any government entity, is inherently suspect, presumptively invalid, and must be subjected to the strictest judicial scrutiny. That has been the consistent holding of the United States Supreme Court. “Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.”

A government agency seeking to allocate resources (such as admission to a preferred school) on the basis of race bears the burden of proving that doing so achieves a compelling state interest and that its racial classification is narrowly tailored to minimize the use of race. The District’s plan is unconstitutional because it is a racial balancing program, accomplishes no compelling interest, and is not narrowly tailored.

Racial Balancing

Racial balancing prefers one individual to another for no reason other than race in an effort to accomplish some predetermined ratio between people of different races. Except to remedy past discrimination, such racial balancing is unconstitutional. The Supreme Court reiterated this fundamental principle in Grutter v. Bollinger, and Gratz v. Bollinger. As Justice Anthony M. Kennedy wrote for the Court in another case, “[a]t the heart of the Constitution’s guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial . . . class.”

Because it uses racial balancing and treats students as members of a racial class, the District’s plan is ipso facto unconstitutional.

Compelling Interest

The Supreme Court has recognized only three interests as sufficiently compelling to justify race discrimination by government: (1) remediation of past discrimination by the government entity at issue, (2) preventing imminent danger to life and limb or addressing other matters of similar “pressing public necessity” such as national security, and (3) obtaining the educational benefits of enrolling a genuinely diverse student body in an institution of higher education (provided race is considered as only one of many ways by which an individual may contribute to diversity). The first two interests are not at issue here, and the district concedes its plan does not pursue the third: The plan seeks to accomplish mere racial, not genuine, diversity, and it does so in secondary schools, not in institutions of higher education.

The Court should not expand this list to permit local, elected officials to engage in race discrimination in the pursuit of racial diversity. First, pursuit of mere racial diversity and its supposed educational benefits entails by definition the pursuit of racial balance and is unconstitutional per se as explained previously. Second, racial diversity is too amorphous a concept to justify race-based decisions by government because it is too vague and provides no logical stopping point. If accepted as a compelling interest, it would justify almost any program of racial proportionality. Third, the sociological evidence relied upon by the district is inconclusive and disputed. Absent the extraordinary deference accorded to universities in Grutter, the weak and conflicting evidence of educational effects of racial diversity in secondary schools does not satisfy the compelling interest requirement. Moreover, the only result the district’s plan accomplishes is a minor adjustment to the white/nonwhite balance at a few high schools that are already diverse by any reasonable definition, and there is no evidence that such tinkering at the margins accomplishes anything at all, much less something important enough to justify race discrimination. Finally, the uncertain educational benefits of racial balancing are outweighed by the costs that racial classifications impose on our republic: They promote notions of inferiority and politics of racial hostility, balkanize us into competing racial factions, and endorse race-based reasoning and the conception of a nation divided into racial blocs.

The district’s argument that its plan is necessary to remedy or prevent “segregation” is simply wrong. Seattle has never operated a de jure segregated school system, and it is one of the most integrated large cities in the county. Students can attend any high school with space available, and the record shows that all of the schools enroll significant percentages of students of different races, even without the operation of the race preference.
Narrow Tailoring
Narrow tailoring requires, at a minimum, that the government show that its racial classification is necessary to achieve its proffered interest and actually advances that interest. The district’s plan is not necessary (Seattle’s high schools are racially diverse and will continue to be if the district simply stops using the race preference), and it does not advance its purported goal (the race preference only tinkers with the racial balance at already-diverse schools and does nothing to address racial balance at the schools with the smallest white populations). In addition, there are alternatives likely to achieve the same benefits. Just dropping race and using distance would yield substantial diversity in the oversubscribed schools, as would considering some of the other background information the district collects about students. Granting a preference based on any of these factors (or using a lottery to determine admission to oversubscribed schools) would mitigate the allegedly problematic effects of relying on distance alone and provide opportunities for students to select a school farther from home without making admissions decisions based on race.

For its classification to survive the narrow tailoring requirement, the district also must show that it earnestly considered race-neutral alternatives. District officials testified that they did not consider race-neutral alternatives because its goal was racial diversity. Because the district did not seriously consider alternatives, its racial classification is not narrowly tailored.

The district’s plan is a racial balancing program, it serves no compelling interest, and it is not narrowly tailored; thus, the plan violates the Equal Protection Clause.

Harry Korrell is a partner and Eric B. Martin is an associate with Davis Wright Tremaine LLP.

Endnotes

Successful litigators understand the importance of lifelong learning. But with research, client meetings, and the everyday work of litigation practice, it can be difficult to find time for professional development. With Litigation Series Teleconferences, discussing the latest issues with nationally known faculty is as easy as picking up the phone.

Litigation Series Teleconferences
Join leading lawyers and judges on the second Tuesday of the month for a lively and balanced discussion of hot issues and litigation fundamentals. As a member of the Section, you qualify for special pricing on each program.

Recent teleconference topics
- Witness preparation and Rule 615
- Inadvertent document production
- Email management
- Successful oral argument
- Sarbanes-Oxley update
- Class certification

Get connected today at www.abanet.org/litigation/teleconferences/

THE CONVENIENT WAY TO STAY CURRENT ON TREND IN LITIGATION PRACTICE
Two questions of overriding importance are presented by the school integration cases now pending before the Supreme Court. The first issue is the extent to which the 14th Amendment permits race-conscious school assignment plans that are designed to achieve or preserve racial integration. The respondent school boards, with copious support in educational research, concluded that substantial educational and social benefits flow from educating public school students in an environment that resembles the larger community in which they live. These benefits include breakdown of racial stereotypes, increases in the number and depth of cross-racial friendships, and improved educational and vocational achievement for racial minorities.

The petitioners argue, nevertheless, that the Equal Protection Clause prohibits pursuit of any racial objective, even by facially race-neutral means, and therefore that these benefits are irrelevant. The federal government, which argued as amicus on behalf of petitioners, argues that the 14th Amendment permits the pursuit of a racial objective—integrated schools—but does not permit the use of overtly racial means to achieve that objective, an argument under which, as one justice commented, “The important thing is simply to hide the ball.” The school boards contend, however, that the Court’s 14th Amendment jurisprudence has long permitted—and encouraged—race-conscious school assignment plans designed to achieve and preserve integration in schools, regardless of any history of purposeful segregation.

The second overriding issue is whether the concept of individualized review, which the Supreme Court in the Michigan cases said was a hallmark of a constitutional plan of race-conscious admissions for selective colleges and universities, is required in the K–12 context. Acceptance of this argument would mean that, if it can be a factor in school assignments, race may be considered only if assignments are determined based on a multifactor individualized review of qualifications, as is typically done in higher education. The school boards contend that individualized review is not required in the K–12 context, where all students are assigned to comparable schools without regard to merit, and that requiring merit-based systems of individual review for K–12 assignments would render meaningful integration plans impractical.

In 2003, the Supreme Court in the Michigan cases upheld the use of race as a factor in deciding who would be admitted to selective colleges and universities. The Court’s majority opinion, authored by Justice Sandra Day O’Connor, held that colleges and universities have a compelling interest in achieving educational diversity and may consider race as a factor to achieve that end. Now, however, in an effort that Judge Alex Kozinski has described as “square pegs being pounded into round holes,” the holdings in the Michigan cases are being used in an attempt to prohibit race-conscious school integration plans, which the Court has encouraged since at least the 1970s.

Specifically, petitioners argue that, although “true diversity” may be a compelling interest, racial diversity (integration) is not; that consideration of race for the purpose of integrating the schools (outside the context of a plan designed to remedy purposeful discrimination) is the constitutional equivalent of consideration of race for the purpose of keeping schools segregated, and that, in any event, race-conscious K–12 plans that do not include merit-based individual review are invalid.

These arguments represent a misuse of the Michigan precedents, which addressed the use of race only in the context of selective higher education admissions and would require the Court to discard much that it has said on the subject of school integration over the past 40 years. In the early 1970s, amid controversy and occasional violence around court-ordered busing, the Supreme Court justified the authority of federal courts to require that the racial makeup of individual schools approximate the makeup of the school district as a whole by reference to the proposition that school boards themselves could take similar steps as a matter of educational policy, even in the absence of a constitutional violation. In two unanimous decisions, the Court stated:

School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole.

As a matter of educational policy school authorities may well conclude that some kind of racial balance in the schools is desirable quite apart from any constitutional requirements.

These statements constituted not just a rationale for court-ordered busing, but were also a message, or perhaps a plea, to school boards to avoid federal intervention by voluntarily adopting integration plans. This message has been reiterated on several occasions. In a 1973 decision with a direct impact on cities without a history of de jure segregation (like Seattle), Keyes held that purposeful segregation could be proved by circumstantial evidence. Concerned that this ruling might discourage school boards from addressing de facto segregation, for fear of being seen as admitting past purposeful discrimination, Justice Lewis Powell, citing Swann, wrote, “[n]othing in this opinion is meant to discourage school boards from exceeding minimal constitutional standards in promoting the values of an integrated school experience.” Similarly, then-Justice William Rehnquist, refusing to stay an order to remedy de facto segregation in
Los Angeles schools, stated, “While I have the gravest doubts that the Supreme Court of California was required by the United States Constitution to take the action that it has taken in this case, I have very little doubt that it was permitted by Constitution to take such action.”10 And, when Bakke struck down quotas on medical school admissions for minority candidates, Justice Powell was careful to note in his lead opinion:

[Bakke’s] position is wholly dissimilar to that of a pupil bused from his neighborhood school to a comparable school in another neighborhood in compliance with a desegregation decree. Petitioner did not arrange for respondent to attend a different medical school in order to desegregate Davis Medical School; instead, it denied him admission and may have deprived him altogether of a medical education.11

As these pronouncements were being issued by the Court, Seattle was struggling to deal with problems of school integration. The city has long experienced a stark pattern of housing segregation, which divides it along north-south lines: into the 1970s, north end schools were almost all white, while nonwhites were concentrated in a few south end schools. Although the city’s nonwhite population grew dramatically (the district is now 60 percent nonwhite), this division did not abate, and nonwhites continue to be concentrated in south Seattle. Meanwhile, the city’s most prestigious and popular high schools are mostly located in north Seattle.12

In the 1970s, Seattle adopted a series of increasingly aggressive school integration plans designed to address this north-south dichotomy. The most controversial of these plans, which involved extensive mandatory busing, resulted in Seattle’s first trip to the Supreme Court on the issue of school integration. Washington v. Seattle Sch. Dist. No. 1, 458 U.S. 457 (1982) (“Seattle I”) struck down a state law prohibiting school boards from busing for integration purposes, reasoning that it was a violation of the Equal Protection Clause to prohibit minority families from seeking the benefits of integrated schools.13 Although the Court did not “specifically pass” on the constitutionality of the assignment plan at issue in that case, the Court cited its prior opinions in the Swann cases14 and a portion of Justice Powell’s lead opinion in Bakke as authority for the proposition that school boards could use race as a part of a voluntary integration plan.15 In holding that a state-wide prohibition on busing for integration purposes violated the Equal Protection Clause, the Court stated:

Education has come to be “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.” Brown v. Board of Education, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954). When that environment is largely shaped by members of different racial and cultural groups, minority children can achieve their full measure of success only if they learn to function in—and are fully accepted by—the larger community. Attending an ethnically diverse school may help accomplish this goal by preparing minority children “for citizenship in our pluralistic society.” Estes v. Metropolitan Branches of Dallas NAACP, 444 U.S. 437, 451, 100 S.Ct. 716, 723, 62 L.Ed.2d 626 (1980) (POWELL, J., dissenting), while we may hope, teaching members of the racial majority “to live in harmony and mutual respect” with children of minority heritage. Columbus Board of Education v. Penick, 443 U.S. at 485, n. 5, 99 S.Ct. at 2946, n. 5 (POWELL, J., dissenting).

As our nation faces new challenges resulting from immigration and worldwide religious and ethnic strife, the importance of providing a racially and ethnically integrated education to public school students has grown, not diminished, in the years since these words were written. Despite the eradication of de jure systems, racial segregation in many public school systems has increased since the 1970s.16 Responsible school officials have responded, as the Supreme Court has consistently indicated that they should, by voluntarily implementing student assignment plans designed to foster and preserve the benefits of integrated education. The Court should not, at this critical juncture, remove an important tool from local school officials.

Michael Madden is with Bennett Bigelow & Leedom, PS, in Seattle, Washington. He is counsel for Seattle School District in Parents Involved in Community Schools v. Seattle School Dist. No 1, No. 05-508.

Endnotes
3. Transcript of Oral Argument in No. 05-915 at 23.
10. Bustop, Inc. v. Board of Educ. of Los


13. The Court stated:
   Education has come to be “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.” Brown v. Board of Education, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954). When that environment is largely shaped by members of different racial and cultural groups, minority children can achieve their full measure of success only if they learn to function in—and are fully accepted by—the larger community. Attending an ethnically diverse school may help accomplish this goal by preparing minority children “for citizenship in our pluralistic society,” Estes v. Metropolitan Branches of Dallas NAACP, 444 U.S. 437, 451, 100 S.Ct. 716, 723, 62 L.Ed.2d 626 (1980) (POWELL, J., dissenting), while, we may hope, teaching members of the racial majority “to live in harmony and mutual respect” with children of minority heritage. Columbus Board of Education v. Penick, 443 U.S., at 485, n. 5, 99 S.Ct., at 2946, n. 5 (POWELL, J., dissenting).


15. 458 U.S. at 472, n. 15.

Ages ago, the sole responsibility of a younger lawyer was to focus on billable hours and honing research and writing skills. Those days are long gone. Success as a younger lawyer today is no longer bestowed solely by the billable hour fairy or based exclusively on quality work product. Rather, it is equally tied to the ability to market oneself effectively—internally and externally.

Younger lawyers today need to recognize the importance of prioritizing business development and networking during their early years rather than waiting and finding themselves behind when it comes time to be considered for partnership. We should not wait for opportunities to arise; we need to create them.

In order to succeed in networking and business development as a younger lawyer, begin with two main principles: visibility, because people have to know you to consider choosing you, and credibility, because people have to be confident that you will do a great job in order to choose you. By keeping these principles in mind, you can create your own recipe for success, using the following plan and ingredients.

**Personalized Marketing Plan**
Create, act on, evaluate and consistently revise a personalized marketing plan (PMP). Your PMP should identify both short-term (1 year) and long-term (5 to 10 year) goals. Importantly, you need to determine a way to quantify your progress. For example, track the number of hours spent on professional activities, specific leadership positions attained, and related initiatives and accomplishments; the number of articles written and presentations given; communications with current clients, with particular attention to new matters generated through your relationship with the client; and the number of contacts made with potential clients. Conduct biannual reviews and update your PMP accordingly.

**Step 1: Create Your Mission Statement**
Why a mission statement? As highlighted in Stephen R. Covey’s time management handbook, *First Things First: To Live, to Love, to Learn, to Leave a Legacy*, writing a personal mission statement offers the opportunity to establish what’s important to you and determine how to stick to it throughout your career. Or, it enables you to chart a new course when you are at a career crossroads. This reasoning is adaptable to a personal mission statement for a younger lawyer. For example, Covey talks about imagining what all of your friends and family would say about you at your 80th birthday or 50th wedding anniversary. For the younger lawyer, in the law firm environment, imagine the partnership meeting at which the firm’s partners will vote on your election to partnership. What do you want them to say about you?

Similarly, Covey refers to crafting a mission statement as “connecting with your own unique purpose and the profound satisfaction that comes in fulfilling it.” Younger lawyers need to do the same thing in crafting their legal career path. We need to look internally and consider: Why am I practicing law? Where do I want my practice to go? What unique strengths do I bring to the table? Be true to yourself and create opportunities you will enjoy.

Younger lawyers need to be introspective while balancing this with focused efforts on the task at hand—reaching clients and potential clients. It is important to always consider your target population: the clients themselves. One should consider: What do my clients and potential clients read and watch? Where do they congregate for business and social purposes? What issues are important to them? For me, the overarching goal is to build long-term, mutually beneficial relationships with clients and referral sources based on honesty, integrity, and credibility.

**Step 2: Outline Your Action Points**
Now that you have completed your mission statement, you need a mechanism to set targets and quantify your progress. This is also the place to identify your short- and long-term goals. Sample action points include taking a few potential clients or referral sources to lunch or dinner each month, writing two articles per year within your substantive area, giving four speeches or presentations within the year and/or presenting two CLEs or seminars before the end of the year, and joining a community organization or board.

**Step 3: Identify the “Who”**
The “Who” is all of the people and organizations that will help you to meet your action points and achieve the goals of your mission statement. Just like a healthy investment portfolio, the “Who” of your PMP needs to be diverse.

**Bar Associations**
On the national level, a younger lawyer can become active in the American Bar Association. As an introduction into the ABA, a younger lawyer can become active in the Young Lawyers Division, which is open to all ABA members under the age of 36 or admitted to practice less than five years. You can also become active on a committee within an ABA section related to your practice area (e.g., the Section of Litigation, which has also established a Young Lawyer Leadership Program).

Many state bar associations and city bar associations also have young lawyers’ sections or divisions. The key to any bar association becoming a viable source of networking and business development is simple: participate! Active participation offers ample networking and business development opportunities for a younger lawyer. Merely showing up for the Annual Meeting is not enough. All of the aforementioned bar associations produce publications, put on CLEs, and host various other networking events, all of which are opportunities for a proactive younger lawyer to approach bar association leadership and say “Put me to work.”

**Alumni Memberships**
Contacts from school can be one of the best sources of referrals and potential...
clients for younger lawyers. But don’t limit yourself to law school and college. Widen your scope and consider friends you have maintained since childhood. A younger lawyer can reap a significant return on a relatively small investment by becoming, and remaining active with, his or her law school, college, and possibly even high school alumni associations. Many times, these alumni associations include affinity associations for members with shared cultural, religious, or geographic backgrounds that tend to offer a cohesive network that is ripe for client development and referrals.

“Internal” Clients
One area of development that many younger lawyers tend to overlook, to their detriment, is internal client development. This refers to building relationships within your office, region, and, if applicable, greater firm. Internal clients include all of a younger lawyer’s colleagues—partners, senior counsel and associates, and peers—and also office staff.

Internal client development can be viewed as a type of cross-selling. There is a reason so many businesses focus on cross-selling: It’s effective. On a rudimentary level, cross-selling is the strategy of pushing new products to current customers based on their past purchases. Cross-selling is designed to widen the customer’s reliance on the company and decrease the likelihood of the customer switching to a competitor. Younger lawyers can adapt this cross-selling strategy for use in their own career development.

Here are some goals for a younger lawyer’s internal cross-selling strategy: increase visibility and credibility with internal clients; expand internal client relationships by assuring that the internal client is completely satisfied with your service, and inquire about additional business and legal issues the internal client has; and familiarize yourself with the internal clients so that you can better anticipate their business objectives and legal strategies.

Non-Lawyers
It is imperative that younger lawyers integrate non-lawyers into their PMP. After all, and particularly in the law firm context, your client in-house counsel in turn services their corporation’s business people, who are mostly non-lawyers. Many cities around the country have some sort of young professionals networking group. Join one. These young professional networking groups (often targeted to young professionals under the age of 40) host networking events and coordinate volunteer activities. Such events offer younger lawyers opportunities to make contacts outside the legal community, including other young up-and-coming leaders who will ultimately be in decision-making positions and capable of influencing the selection of counsel, either within their own corporations or through referral. Because of the ever-looming billable hours, there tends to be a dearth of lawyers participating in young professionals networking groups. But proactive younger lawyers can use this underrepresentation to their advantage, becoming a bigger fish in a smaller pond.

Step 4: Identify the “How”
Now that you have completed your mission statement, identified your action points, and outlined the “Who,” we need to give your PMP legs by identifying the “How.” In essence, the “How” identifies how you are going to meet your action points and personify your mission statement.

Suggestions include (1) renew contacts and cultivate relationships with potential referral and client sources; (2) become active in a bar association and/or community organization, and volunteer to take on leadership roles; (3) become active internally within your firm—at the office, regional, or firm-wide level; and (4) increase visibility through print and presentations.

Simple ways to renew contacts and cultivate relationships with individuals who are potential referral or client sources include inviting them to lunch, dinner, or a sporting event and following up punctually with a telephone call, letter, or email.

Becoming active in bar associations and community organizations, and volunteering to take on leadership roles, begins with researching the applicable organizations, expressing an interest, and attending meetings. The next step is to build visibility and credibility by actively participating in the organization by organizing meetings and events and by chairing and cochairing committees and subcommittees.

Younger women and minority lawyers can become active in diversity-focused organizations such as the Minority Corporate Counsel Association (MCCA). The MCCA advocates for the expanded hiring, retention, and promotion of women and minority attorneys in corporate law departments and the law firms that serve them. The MCCA provides great networking and business development opportunities to younger lawyers through their diversity dinner series, regional networking panels and receptions, CLE expos, and diversity conferences.

In order to get more involved in your firm, seek opportunities to become active in recruiting and hiring, the summer program, or associates committee.

There are several ways to increase visibility through print, including not only writing articles for business publications, legal publications, and firm publications, but also for your law school magazine or

SUGGESTED READING

Effective Marketing for Lawyers
Christine S. Filip, Esq.
New York State Bar Association, 1996

First Things First: To Live, to Love, to Learn, to Leave a Legacy
Steven R. Covey, A. Roger Merrill, and Rebecca R. Merrill • Fireside, 1994

Lions Don’t Need to Roar
D. A. Benton • Prentice Hall, 1992

Marketing the Law Firm: Business Development Techniques
Sally Schmidt
Law Journal Seminars’ Press, 1991

Making Rain
Jerry Sears • Associates Publishers, 2001

The Art of Winning Conversation
Morey Stettner • Prentice Hall, 1995

The 7 Habits of Highly Effective People
Stephen R. Covey
Simon and Schuster, 1989

Who Moved My Cheese?
Spencer Johnson and Kenneth Blanchard
Penguin Putnam, Inc. 1998
The reach of these writings can be increased by sending them to your contacts. Similarly, many potential clients and referral sources are pleased to receive information of interest, articles and recent case law—even if it is not your own work—from a younger lawyer who is anticipating their needs. This applies to both internal and external clients.

To increase visibility through speaking, a younger lawyer must speak whenever and wherever he or she can. One way to get a leg in the door is to volunteer or ask to present with someone senior to you. Another option is to be part of a panel rather than trying to debut as the main attraction. The reach of a younger lawyer’s speaking engagements can be increased by inviting his or her contacts. Sample speaking engagements include CLE seminars and substantive area seminars, both internal and external.

**Closing Thoughts**

In addition to a PMP, younger lawyers need to keep their profiles updated and keep a working file for all articles, presentations, major achievements, and kudos. You should focus on building credibility by consistently providing top-notch service and work through preparation, and returning calls and emails promptly—even if the response is that you need to research the issue and get back to the client. Younger lawyers should hone their skills to better anticipate client needs and should be respectful of client schedules. This is particularly important when sending documents to clients for review. Along the same lines, younger lawyers need to focus on understanding expectations, always meeting deadlines, being budget conscious, and providing consistent status updates, without needing to be asked for them.

It’s not rocket science, but it does take effort, time, and commitment to accomplish your goals. Start by taking two hours of quiet time this weekend and write a mission statement. You will be amazed at how much progress will flow from that simple effort.

Michelle N. Lipkowitz is an associate with McGuireWoods LLP in Baltimore, Maryland.
Giving Back: CJA Panel Service Enriches Communities

BY ISMAIL RAMSEY

The Sixth Amendment guarantees the right to counsel in criminal cases. In Gideon v. Wainwright, 372 U.S. 335 (1963), the Supreme Court made clear that indigent defendants have the right to counsel not only in capital cases, but also in all felony and misdemeanor cases.

Congress passed the Criminal Justice Act, 18 U.S.C. § 3006A, in order to ensure available representation for those who cannot afford to pay for a lawyer. The act requires that each district court maintain “a plan for furnishing representation for any person financially unable to obtain adequate representation.” The act further requires that, in addition to a public defender’s office, legal aid, or bar association, each district court maintain a panel of private attorneys from which the court can appoint private attorneys to represent indigent defendants. See 18 U.S.C. § 3006A(b), (c).

Accordingly, each district court has established its own plan for picking lawyers to serve on its respective CJA panel. Some districts maintain multiple panels to address different types of cases. The Northern District of California, for example, has a criminal appeals panel and two different panels for trial work—one for cases in either the San Francisco or Oakland courthouses and a second for cases in San Jose. The Central District of California has three separate panels—one for each geographic division of that court—Los Angeles, Santa Ana, and Riverside.

The district courts often have an annual selection process, selecting panel members to serve for a set period. Panel members in the Northern District of California serve a three-year term and must be off the panel for at least one year before reapplying. The Central District of California also maintains three-year terms. Other courts have no term limit. In Colorado, selected lawyers can serve for at least one year before reapplying. The Central District of California also maintains three-year terms. Other courts have no term limit. In Colorado, however, a panel of attorneys approves applicants.

Serving on a CJA panel is rewarding in many different respects for those lawyers fortunate enough to be selected.

Panel lawyers are able to appear in court, argue bail issues, argue suppression motions, and ultimately try cases.

First, it is socially rewarding. Many litigators working for corporate law firms complain that their work doesn’t directly affect their community. They feel that they are working for faceless corporations. Court-appointed criminal defense work, however, almost always directly benefits a member of the community. The clients often are individuals raised in the community in which they are charged, and they simply can’t afford a lawyer. Unfortunately, defendants are also often members of the minority community. Faces of those working in the well of the criminal courtrooms are not. The presence of minority lawyers on panels helps bridge this gap. And most defendants, as well as their families, are extremely appreciative of your efforts. This personal connection provides a unique sense of reward in the practice.

Second, panel cases allow lawyers to improve their in-court and trial skills. Over the last 20 years, it has become increasingly difficult for lawyers to acquire and maintain trial skills. More and more cases are settled. In the civil arena, arbitration, mediation, and settlement predominate. Criminal cases, however, are not subject to alternative dispute resolution and are virtually always resolved after at least some involvement with the judicial system. As a result, panel lawyers are able to appear in court, argue bail issues, argue suppression motions, and ultimately try cases. In some cases, it may also be necessary to argue sentencing issues. Lawyers can only best develop trial and in-court skills through actual practice. Panel cases afford the opportunity to do just that.

Third, working on panel cases provides exposure to the federal bench. As discussed previously, corporate litigators today rarely get to go to court, and even less frequently to federal court. Much of civil litigation (such as discovery) occurs outside of court. And most cases are resolved before trial. Panel cases, however, require a lawyer to appear before the court on a variety of issues, from bail through sentencing if needed. Such experiences expose you to the federal bench and provide an opportunity to increase your credibility with local federal judges. Such exposure and experience is invaluable in other cases.

Fourth, panel work is fun. While that work pertains to very serious matters (e.g., a defendant’s liberty), it often involves intricate factual scenarios that affect individuals and are intriguing puzzles to be solved. Additionally, some cases involve multiple defendants, requiring several lawyers. Working with other lawyers allows you to develop camaraderie and friendships with others in the local bar.

Fifth, for small firms and solo practitioners, panel work can provide a steady source of income. While in large metropolitan areas, court-appointed cases may not cover the high expenses of rent, they do provide an amount of work that will provide some regular income. They help meet basic overhead expenses.

Sixth, being a member of a CJA panel is a marketing tool. The fact that the federal bench and local lawyers approved one’s selection on the panel gives the retained client comfort that you are a capable
Race-Neutral Means

Continued from page 1

nonracial basis.” Since Brown, the federal courts have taken extraordinary measures to eradicate not only de jure segregation in public schools but any lingering effects of such segregation.

School districts across the nation use a variety of race-neutral measures to promote integration of public schools. This is not the case in Louisville. After being released from a desegregation order in 2001, Louisville voluntarily adopted a student integration plan that divides students into two racial categories: black and white. Latin and Asian students are lumped into the white racial group. Louisville then uses race to assign children to elementary and secondary public schools to ensure that no school has a black population of less than 15 percent or greater than 50 percent in a system whose overall student population is 34 percent black. Louisville uses its 15 to 50 percent racial guidelines to set noncontiguous attendance boundaries, to group elementary schools into clusters, to admit students into special programs including magnet programs, and to handle student transfer requests. Where the racial composition of a school is at either end of the range, race is the ultimate factor in granting or denying a child his or her choice of school if the request places the school outside the racial guidelines, even if the receiving school has available space. The purpose of the guidelines is to remedy the “community’s segregated housing patterns.” This amounts to outright racial balancing.

The Court has repeatedly made clear that racial balancing, for its own sake, “is patently unconstitutional.” By its own terms, the Equal Protection Clause guarantees “racial neutrality in governmental decision making.” Because the clause “protect[s] persons not groups . . . all governmental action based on race—a group classification long recognized as ‘in most circumstances irrelevant and therefore prohibited’—should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection of the laws has not been infringed.” The government is not permitted to play the role of social engineer and reshuffle students on the basis of race simply because of the choices made by parents and guardians on where to live.

Grutter and Racial Discrimination in Public Schools

In Grutter v. Bollinger, the United States Supreme Court recognized a compelling interest in permitting the limited consideration of race to attain a genuinely diverse student body at universities and graduate schools. That interest is not implicated in K-12 public schools.

In Grutter, the goal of assembling a “broadly diverse” class was compelling because “attaining a diverse student body is at the heart of [the] law school’s proper institutional mission.” The law school considered a wide variety of characteristics aside from race and ethnicity that contributed to a diverse student body. The law school looked at each applicant’s background, experiences, and characteristics to assess his or her potential contribution to diversity.

Unlike the law school in Grutter, Louisville does not seek a genuinely diverse student body in its K-12 public schools. In determining which students must be admitted to its schools, Louisville considers race alone to maintain student bodies that include a preset percentage of black children and white children. No other aspect of the child’s background is considered. It is this process of racial balancing—the mechanical use of race to accomplish a predetermined objective—that the Supreme Court has condemned.
Social Science Evidence and Racial Balancing

Social science research does not support the conclusion that racial diversity provides educational benefits to children. This research is often litigation driven, controversial, not uniform, inconsistent, and/or not sufficiently conclusive to support a finding that achieving a particular degree of racial balance constitutes a compelling interest. At best, the educational benefits are marginal. That is, there is no credibility to the assertion that racial classifications and racial balancing are essential to an effective education. In fact, the overwhelming majority of school districts does not, and could not, use race-based assignments given the demographics. And yet, the education provided does not seem distinctively worse than in those districts with compulsory racial integration policies.

When racial preferences in school assignments are imposed, they have the potential to stigmatize children by reason of their membership in a racial group and to incite racial hostility. Telling children that they will or will not be allowed to attend the school of their choice because of their skin color teaches them the wrong lesson. No amount of narrow tailoring in the use of racial assignments can eliminate these negative effects. Nondiscrimination cannot be taught by discrimination; assigning children by skin color feeds stereotyping and the notion that we are defined by race.

Race-Neutral Means of Integration

Schools remain free to achieve their goal of racially integrated schools through race-neutral alternatives. For example, race-neutral decisions about school budgets, faculty qualifications, and curricula can, and do, have a substantial impact on the racial composition of schools, particularly where the school district incorporates student choice into its assignment plan. A parent whose child attends an underfunded school will not be mollified by being told that the school is racially identical to an overfunded school. School districts should ensure broad educational opportunities to all students without regard to irrelevant characteristics such as race.

Sharon L. Browne is a Principal Attorney at Pacific Legal Foundation. She filed amicus briefs in Meredith and sat second chair assisting the parent’s attorney at the Supreme Court. She can be reached at slb@pacificlegal.org.

Endnotes

1. McFarland v. Jefferson County Pub. Sch, 330 F. Supp. 2d 834, 838 n.3 (W. D. Ky. 2004), aff’d 416 F. 3d. 513 (6th Cir. 2005) (Joshua “was denied admittance because his transfer to Bloom would have had an adverse effect on Young’s racial composition”).
4. Id. at 840 n.6.
5. Id. at 840–42.
6. Id. at 842.
7. Id. at 842.
8. Respondents’ Brief on the Merits at 23.
14. Shaw v. Reno

Student Assignment Plan

Continued from page 1

In middle and high schools, racial integration is accomplished primarily through the drawing of attendance areas, some of which have noncontiguous boundaries. In elementary schools, students choose from among 5 to 10 schools within a geographic cluster of schools, and students are almost always assigned either to their first or second school choice. All schools subject to the plan are basically equal in their financial resources; the quality of their instructional staff; the curriculum provided in compliance with state law; and matters such as grading, promotion, discipline, dress codes, homework policies, and extracurricular activities. Assignment decisions are influenced by space and program limitations more than by the racial guidelines. The district court concluded that race has a “minimal impact” on the assignment process.

Crystal Meredith, who challenged the plan in district court, did not present a convincing case. Meredith did not submit an application in spring of 2002 to choose a kindergarten for her son. In August 2002, Meredith asked to enroll her son in his neighborhood school. Because it is a “year-round” school, which had started classes in July, it had no space for him. JCPS assigned Meredith’s son to another school in his cluster, and she applied for a transfer to a school outside the cluster. The application was denied under the racial guidelines. Meredith neither appealed the denial nor applied for a transfer to another school, and she did not in spring of 2003 indicate a choice for first grade. Meredith testified in district court that she wanted a transfer so that her son could attend an ungraded primary school program. In fact, state law requires every elementary school to have that program. After the trial, Meredith again applied for a transfer, which was granted. Thus, Meredith’s son has attended her desired school since 2004.

The district court decided the case under the “strict scrutiny” test that was applied to institutions of higher education in Gratz v. Bollinger, 539 U.S. 244 (2003), and Grutter v. Bollinger, 539 U.S. 306 (2003). The district court held that JCPS has a “compelling interest” in providing a competitive and attractive public school system, maintaining community support for JCPS, and preparing students for life in a racially diverse society. The district court also held that the plan is “narrowly tailored” because it is flexible and uses race in a limited manner, it lacks the attributes of a quota, it does not cause undue harm, it in large part uses race-neutral alternatives, and it is subject to periodic review by democratic processes. The Sixth Circuit affirmed in a per curiam opinion, and the
The community has shown, in opinion polls, strong support for a student assignment plan that provides choice by parents and students and maintains racially integrated schools.

The plan is a success story. The number and percentage of Jefferson County students enrolled in JCPS declined dramatically in the late 1970s, after the decree. Since 1984, when JCPS began its periodic revisions to the court-ordered plan, the percentage of public school attendees has stabilized. Moreover, the percentage of white students in JCPS has likewise remained stable, despite a relative decline in white births. Students, graduates, parents, teachers, and the community have shown, in periodic opinion polls, strong support for a student assignment plan that provides for choice by parents and students and maintains racially integrated schools.

It is often true that those who cannot remember the past are condemned to repeat it. The people of Jefferson County do remember their past of racially segregated schools, and they do not want to repeat it. The Supreme Court will maintain the promise of Brown v. Board of Education, 347 U.S. 483 (1954) if it agrees with the district court and the Sixth Circuit and upholds the student assignment plan.

The community has shown, in opinion polls, strong support for a student assignment plan that provides choice by parents and students and maintains racially integrated schools.

Frank Mellen is a partner with Wyatt, Tarrant & Combs, LLP, in Louisville, Kentucky. He can be contacted at fmellen@wyattfirm.com.

Chairs’ Column

Continued from page 2

to achieve its desired racial mix.

The Supreme Court heard arguments on the cases in December 2006. The Court, with the addition of Justice Samuel Alito and Chief Justice John Roberts—and loss of Justice Sandra Day O’Connor—is a different bloc than that which decided Grutter and Gratz. After watching the December arguments, one commentator noted that “[t]here seem[s] little prospect that either the Louisville, Ky., or Seattle plan would survive the court’s hostile new majority.” Linda Greenhouse, “Court Reviews Race as Factor in School Plans,” N.Y. Times, December 5, 2006.

The Court is expected to decide these cases at any moment. In this issue of the Minority Trial Lawyer, we have four perspectives on these cases. Lawyers from both sides of the cases have provided us with insightful dialogue into this important issue facing our nation. We greatly appreciate their contributions to this issue, and we are proud to present them to our readers. As these articles suggest, whatever the Court decides, it seems that the issue is far from being resolved.

Minority Trial Lawyer • Spring/Summer 2007


JCPS argued in the Supreme Court that its interest must be considered in light of the uniquely important role of public schools as the nation’s principal institution for imparting the fundamental values of our democratic society. See, e.g., Plyler v. Doe, 457 U.S. 202, 221–22 (1982); Ambach v. Norwich, 441 U.S. 68, 77 (1979). Racial integration in public elementary and secondary schools teaches racial tolerance and diminishes racial stereotypes while preparing students for life in a diverse society—benefits that Grutter held to be “important and laudable.” 539 U.S. at 330. These lessons are best learned early by students, not when they are “full-grown adults” in higher education. Id. at 347 (Scalia, J., dissenting).

JCPS noted that its evidence, which was not contradicted, showed that racial integration provides substantial academic benefits to black students without harming white students. Finally, JCPS argued that its educational judgment about the benefits of racial integration is entitled to the deference that federal courts traditionally have given to decisions of local school boards, including voluntary integration plans. See, e.g., Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971); Bustop, Inc. v. Board of Education of City of Los Angeles, 439 U.S. 1380 (1978); Washington v. Seattle School District No. 1, 458 U.S. 457 (1982).

JCPS argued that the question whether the plan is narrowly tailored must likewise be considered in the unique context of elementary and secondary education. See Grutter, 539 U.S. at 327, citing Gomillion v. Lightfoot, 364 U.S. 339, 343 (1960). In this setting, Grutter’s requirement of “individualized consideration” is simply not applicable. See Parents Involved in Community Schools v. Seattle School District No. 1, 462 F. 3d 1162, 1184 (9th Cir. 2005), cert. granted, 126 S. Ct. 2351 (2006). Because the range of black enrollment at individual JCPS schools varies widely within the 15 to 50 percent outer limits, the guidelines are “a range inconsistent with a quota.” Grutter, 539 U.S. at 336. All but a small percentage of assignments are made in a race-neutral manner without application of the guidelines, and the plan is subject to periodic review and modifica-

...
Features of the Store Include:

- E-Products
- Special Discounts, Promotions and Offers
- Advanced Search Capabilities
- New Books and Future Releases
- Best Sellers
- Podcasts
- Special Offers
- Magazines, Journals and Newsletters

Visit the ABA Web Store at www.ababooks.org

Over 100,000 customers have purchased products from our new ABA Web Store. This is what they have to say:

“The site is easily manageable.”

“...I found just what I needed and obtained it quickly! Thanks.”

“Easy to navigate; instructions are clear and complete.”

“This is one of my favorite online resources for legal materials.”

“Brings everything that is important to my practice to my fingertips!”

Don’t hesitate. With over 2,000 products online and more being added every day, you won’t be disappointed!

www.ababooks.org
In This Issue

Jefferson County: Integration Through Race-Neutral Means ..................1
Jefferson County: Student Assignment Plan Benefits Community ..........1
Seattle School District Plan Violates Equal Protection Clause ..........3
Seattle School District Plan an Important Tool for Integration ........5

YOUNG LAWYERS:
Don’t Wait, Create! Networking & Business Development ..............8

Giving Back: CIA Panel Service Enriches Communities ..............11