The Journal of Law and Education

Volume 4 | Issue 1 Article 18

1-1975

Commentary - Milliken v. Bradley - the 1974 Decision

Commentary

Milliken v. Bradley—The 1974 Decision*

42 U. S. L. W. 5249 (U.S. July 25, 1974)

BURGER, C. J., delivered the opinion of the Court, in which STEWART, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. STEWART, J., filed a concurring opinion. DOUGLAS, J., filed a dissenting opinion. WHITE, J., filed a dissenting opinion, in which DOUGLAS, BRENNAN, and MARSHALL, JJ., joined. MARSHALL, J., filed a dissenting opinion, in which DOUGLAS, BRENNAN, and WHITE, JJ., joined.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in these consolidated cases to determine whether a federal court may impose a multidistrict, areawide remedy to a single district *de jure* segregation problem absent any finding that the other included school districts have failed to operate unitary school systems within their districts, absent any claim or finding that the boundary lines of any affected school district were established with the purpose of fostering racial segregation in public schools, absent any finding that the included districts committed acts which effected segregation within the other districts, and absent a meaningful opportunity for the included neighboring school districts to present evidence or be heard on the propriety of a multidistrict remedy or on the question of constitutional violations by those neighboring districts.[1]

I

The action was commenced in August of 1970 by the respondents, the Detroit Branch of the National Association for the Advancement of Colored People[2] and individual parents and students, on behalf of a class later defined by order of the United States District Court, ED Michigan, dated February 16, 1971, to include "all school children of the City of Detroit and all Detroit resident parents who have children of school age." The named defendants in the District Court included the Governor of Michigan, the Attorney General, the State Board of Education, the State Superintendent of Public Instruction, and the

* *Editor's Note:* For sake of brevity, only the Court's majority opinion and Justice Stewart's concurring opinion are reprinted.

[1] *Bradley* v. *Milliken*, 484 F. 2d 215 (CA6 1973); cert. granted, 414 U. S. 1038 (Nov. 19, 1973).

[2] The standing of the NAACP as a proper party plaintiff was not contested in the trial court and is not an issue in this case.

Board of Education of the city of Detroit, its members and its former superintendent of schools. The State of Michigan as such is not a party to this litigation and references to the State must be read as references to the public officials, State and local, through whom the State is alleged to have acted. In their complaint respondents attacked the constitutionality of a statute of the State of Michigan known as Act 48 of the 1970 Legislature on the ground that it put the State of Michigan in the position of unconstitutionally interfering with the execution and operation of a voluntary plan of partial high school desegregation, known as the April 7, 1970 Plan, which had been adopted by the Detroit Board of Education to be effective beginning with the fall 1970 semester. The complaint also alleged that the Detroit Public School System was and is segregated on the basis of race as a result of the official policies and actions of the defendants and their predecessors in office, and called for the implementation of a plan that would eliminate "the racial identity of every school in the [Detroit] system and... maintain now and hereafter a unitary non-racial school system."

Initially the matter was tried on respondents' motion for preliminary injunction to restrain the enforcement of Act 48 so as to permit the April 7 Plan to be implemented. On that issue, the District Court ruled that respondents were not entitled to a preliminary injunction since at that stage there was no proof that Detroit had a dual segregated school system. On appeal, the Court of Appeals found that the "implementation of the April 7 Plan was [unconstitutionally] thwarted by state action in the form of the Act of the Legislature of Michigan," 43 F.2d 897, 902 (CA6 1970), and that such action could not be interposed to delay, obstruct, or nullify steps lawfully taken for the purpose of protecting rights guaranteed by the Fourteenth Amendment. The case was remanded to the District Court for an expedited trial on the merits.

On remand the respondents moved for immediate implementation of the April 7 Plan in order to remedy the deprivation of the claimed constitutional rights. In response the School Board suggested two other plans, along with the April 7 Plan, and urged that top priority be assigned to the so-called "Magnet Plan" which was "designed to attract children to a school because of its superior curriculum." The District Court approved the Board's Magnet Plan, and respondents again appealed to the Court of Appeals moving for summary reversal. The Court of Appeals refused to pass on the merits of the Magnet Plan and ruled that the District Court had not abused its discretion in refusing to adopt the April 7 Plan without an evidentiary hearing. The case was again remanded with instructions to proceed immediately to a trial on the merits of respondents' substantive allegations concerning the Detroit School System. 438 F.2d 945 (CA6 1971).

The trial of the issue of segregation in the Detroit school system began on April 6, 1971, and continued through July 22, 1971, consuming some 41 trial days. On September 27, 1971, the District Court issued its findings and conclusions on the issue of segregation finding that "Government actions and inaction at all levels, federal, state and local, have combined, with those of private organizations, such as loaning institutions and real estate associations and

brokerage firms, to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area." *Bradley* v. *Milliken,* 338 F. Supp. 582, 587 (ED Mich. 1971). While still addressing a Detroit-only violation, the District Court reasoned:

> "While it would be unfair to charge the present defendants with what other governmental officers or agencies have done, it can be said that the actions or the failure to act by the responsible school authorities, both city and state, were linked to that of these other governmental units. When we speak of governmental action we should not view the different agencies as a collection of unrelated units. Perhaps the most that can be said is that all of them, including the school authorities, are, in part, responsible for the segregated condition which exists. And we note that just as there is an interaction between residential patterns and the racial composition of the schools, so there is a corresponding effect on the residential pattern by the racial composition of the schools." 338 F. Supp., at 587.

The District Court found that the Detroit Board of Education created and maintained optional attendance zones[3] within Detroit neighborhoods undergoing racial transition and between high school attendance areas of opposite predominant racial compositions. These zones, the court found, had the "natural, probable, foreseeable and actual effect" of allowing White pupils to escape identifiably Negro schools. 338 F. Supp., at 587. Similarly, the District Court found that Detroit school attendance zones had been drawn along north-south boundary lines despite the Detroit Board's awareness that drawing boundary lines in an east-west direction would result in significantly greater desegregation. Again, the District Court concluded, the natural and actual effect of these acts was the creation and perpetuation of school segregation within Detroit.

The District Court found that in the operation of its school transportation program, which was designed to relieve overcrowding, the Detroit Board had admittedly bused Negro Detroit pupils to predominantly Negro schools which were beyond or away from closer White schools with available space.[4] This practice was found to have continued in recent years despite the Detroit Board's avowed policy, adopted in 1967, of utilizing transportation to increase desegregation:

> "With one exception (necessitated by the burning of a white school), defendant Board has never bused white children to predominantly black schools. The Board has not bused white pupils to black schools despite the enormous amount of space available in inner-city schools. There were 22,961 vacant seats in schools 90% or more black." 338 F. Supp., at 588.

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[3] Optional zones, sometimes referred to as dual zones or dual overlapping zones, provide pupils living within certain areas a choice of attendance at one of two high schools.

[4] The Court of Appeals found record evidence that in at least one instance during the period between 1957–1958, Detroit served a suburban school district by contracting with it to educate its Negro high school students by transporting them away from nearby suburban White high schools, and past Detroit high schools which were predominantly White, to all or predominantly Negro Detroit schools. *Bradley* v. *Milliken,* 484 F. 2d 215, 231 (CA6 1973).

With respect to the Detroit Board of Education's practices in school construction, the District Court found that Detroit school construction generally tended to have segregative effect with the great majority of schools being built in either overwhelmingly all Negro or all White neighborhoods so that the new schools opened as predominantly one race schools. Thus, of the 14 schools which opened for use in 1970–1971, 11 opened over 90% Negro and one opened less than 10% Negro.

The District Court also found that the State of Michigan had committed several constitutional violations with respect to the exercise of its general responsibility for, and supervision of, public education.[5] The State, for example, was found to have failed, until the 1971 Session of the Michigan Legislature, to provide authorization or funds for the transportation of pupils within Detroit regardless of their poverty or distance from the school to which they were assigned; during this same period the State provided many neighboring, mostly White, suburban districts the full range of state supported transportation.

The District Court found that the State, through Act 48, acted to "impede, delay and minimize racial integration in Detroit schools." The first sentence of § 12 of Act 48 was designed to delay the April 7, 1970, desegregation plan originally adopted by the Detroit Board. The remainder of § 12 sought to prescribe for each school in the eight districts criterion of "free choice" and "neighborhood schools," which, the District Court found, "had as their purpose and effect the maintenance of segregation." 338 F. Supp., at 589.[6]

The District Court also held that the acts of the Detroit Board of Education, as a subordinate entity of the State, were attributable to the State of Michigan thus creating a vicarious liability on the part of the State. Under Michigan law, Mich. Stat. Ann. § 15, 1961, for example, school building construction plans had to be approved by the State Board of Education, and prior to 1962, the State Board had specific statutory authority to supervise school site selection. The proofs concerning the effect of Detroit's school construction program were,

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[5] School districts in the State of Michigan, are instrumentalities of the State and subordinate to its State Board of Education and legislature. The Constitution of the State of Michigan, Art. VIII, § 2, provides in relevant part:

"The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law."

Similarly, the Michigan Supreme Court has stated that "The school district is a state agency. Moreover, it is of legislative creation...." *Attorney General* v. *Loweey,* 131 Mich. 639, 644, 92 N. W. 289, 290 (1902); "Education in Michigan belongs to the State. It is no part of the local self-government inherent in the township or municipality, except so far as the legislature may choose to make it such. The Constitution has turned the whole subject over to the legislature ....." *Attorney General* v. *Detroit Board of Education,* 154 Mich. 584, 590, 118 N. W. 606, 609 (1908).

[6] "Sec. 12. The implementation of any attendance provisions for the 1970–71 school year determined by any first class school district board *shall be delayed* pending the date of commencement of functions by the first class school district boards established under the provisions of this amendatory act but such provision shall not impair the right of any such board to determine and implement prior to such date such changes in attendance provisions as are mandated by practical necessity...." Act No. 48, Section 12, Public Acts of Michigan, 1970; Michigan compiled Laws Section 388.182 (emphasis added).

therefore, found to be largely applicable to show State responsibility for the segregative results.[7]

Turning to the question of an appropriate remedy for these several constitutional violations, the District Court deferred a pending motion[8] by intervening parent defendants to join as additional parties defendant some 85 school districts in the three counties surrounding Detroit on the ground that effective relief could not be achieved without their presence.[9] The District Court concluded that this motion to intervene was "premature," since it "has to do with relief" and no reasonably specific desegregation plan was before the court. 388 F. Supp., at 595. Accordingly, the District Court proceeded to order the Detroit Board of Education to submit desegregation plans limited to the segregation problems found to be existing within the city of Detroit. At the same time, however, the state defendants were directed to submit desegregation plans encompassing the three-county metropolitan area[10] despite the fact that the school

[7] The District Court briefly alluded to the possibility that the State, along with private persons, had caused, in part, the housing patterns of the Detroit metropolitan area which, in turn, produced the predominantly White and predominantly Negro neighborhoods that characterize Detroit:

"It is no answer to say that restricted practices grew gradually (as the black population in the area increased between 1920 and 1970), or that since 1948 racial restrictions on the ownership of real property have been removed. The policies pursued by both government and private persons and agencies have a continuing and present effect upon the complexion of the community —as we know, the choice of a residence is a relatively infrequent affair. For many years FHA and VA openly advised and advocated the maintenance of "harmonious" neighborhoods, *i.e.*, racially and economically harmonious. The conditions created continue." 338 F. Supp., at 587.

Thus, the District Court concluded,

"The affirmative obligation of the defendant Board has been and is to adopt and implement pupil assignment practices and policies that compensate for and avoid incorporation into the school system the effects of residential racial segregation." 338 F. Supp., at 593.

The Court of Appeals, however, expressely noted that:

"In affirming the District Judge's findings of constitutional violations by the Detroit Board of Education and by the State defendants resulting in segregated schools in Detroit, we have not relied at all upon testimony pertaining to segregated housing except as school construction programs helped cause or maintain such segregation." 484 F. 2d, at 242.

Accordingly, in its present posture, the case does not present any question concerning possible state housing violations.

[8] On March 22, 1971, a group of Detroit residents, who were parents of children enrolled in the Detroit public schools, were permitted to intervene as parties defendant. On June 24, 1971, the District Judge alluded to the "possibility" of a metropolitan school system stating: "As I have said to several witnesses in this case: how do you desegregate a black city, or a black school system." IV App., at 259–260. Subsequently, on July 17, 1971, various parents filed a motion to require to joinder of all of the 85 independent school districts within the tri-county area.

[9] The respondents, as plaintiffs below, opposed the motion to join the additional school districts, arguing that the presence of the state defendants was sufficient and all that was required, even if, in shaping a remedy, the affairs of these other districts was to be affected. 338 F. Supp., at 595.

[10] At the time of the 1970 census, the population of Michigan was 8,875,083, almost half of which, 4,199,931, resided in the tri-county area of Wayne, Oakland, and Macomb. Oakland and Macomb Counties abut Wayne County to the north, and Oakland County abuts Macomb County to the west. These counties cover 1,952 square miles, Michigan Statistical Abstract, 1972 (9th ed.), and the area is approximately the size of the State of Delaware (2,057 square

districts of these three counties were not parties to the action and despite the fact that there had been no claim that these outlying counties, encompassing some 85 seperate school districts, had committed constitutional violations.[11] An effort to appeal these orders to the Court of Appeals was dismissed on the ground that the orders were not appealable. 468 F. 2d 902, cert. denied, 409 U. S. 844. The sequence of the ensuing actions and orders of the District Court are significant factors and will therefore be catalogued in some detail.

Following the District Court's abrupt announcement that it planned to consider the implementation of a multidistrict, metropolitan area remedy to the segregation problems identified within the city of Detroit, the District Court was again requested to grant the outlying school districts intervention as of right on the ground that the District Court's new request for multidistrict plans "may, as a practical matter, impair or impede [the intervenor's] ability to protect" the welfare of their students. The District Court took the motions to intervene under advisement pending submission of the requested desegregation plans by Detroit and the state officials. On March 7, 1972, the District Court notified all parties and the petitioner school districts seeking intervention, that March 14, 1972, was the deadline for submission of recommendations for conditions of intervention and the date of the commencement of hearings on Detroit-only desegregation plans. On the second day of the scheduled hearings, March 15, 1972, the District Court granted the motions of the intervenor school districts[12] subject, *inter alia,* to the following conditions:

> "1. No intervenor will be permitted to assert any claim or defense previously adjudicated by the court.
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> "2. No intervenor shall reopen any question or issue which has previously been decided by the court.
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> "7. New intervenors are granted intervention for two principal purposes: (a) To advise the court, by brief, of the legal propriety or impropriety of considering a metropolitan plan; (b) To review any plan or plans for the desegregation of

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miles), more than half again the size of the State of Rhode Island (1,214 square miles) and almost 30 times the size of the District of Columbia (67 square miles). Statistical Abstract of United States, 1972 (93d ed.). The population of Wayne, Oakland, and Macomb Counties was 2,666,751; 907,871 and 625,309; respectively in 1970. Detroit, the State's largest city, is located in Wayne County.

In the 1970–1971 school year, there were 2,157,449 children enrolled in the school districts in Michigan. There are 86 independent, legally distinct school districts within the tri-county area, having a total enrollment of approximately 1,000,000 children. In 1970, the Detroit Board of Education operated 319 schools with approximately 276,000 students.

[11] In its formal opinion, subsequently announced, the District Court candidly recognized that:

"It should be noted that the court has taken no proofs with respect to the establishment of the boundaries of the 86 public school districts in the counties of Wayne, Oakland and Macomb, nor on the issue of whether, with the exclusion of the city of Detroit school district, such school districts have committed acts of *de jure* segregation." 345 F. Supp. 914, 920.

[12] According to the District Court, intervention was permitted under Rule 24(a), Fed. Rule Civ. Proc., "Intervention of Right," and also under Rule 24(b), "Permissive Intervention."

> the so-called larger Detroit Metropolitan area, and submitting objections, modifications or alternatives to it or them, and in accordance with the requirements of the United States Constitution and the prior orders of this court." I App., at 206.

Upon granting the motion to intervene, on March 15, 1972, the District Court advised the petitioning intervenors that the court had previously set March 22, 1972, as the date for the filing of briefs on the legal propriety of a "metropolitan" plan of desegregation and, accordingly, that the intervening school districts would have one week to muster their legal arguments on the issue.[13] Thereafter, and following the completion of hearings on the Detroit-only desegregation plans, the District Court issued the four rulings that were the principal issues in the Court of Appeals.

(a) On March 24, 1972, two days after the intervenors' briefs were due, the District Court issued its ruling on the question of whether it could "consider relief in the form of a metropolitan plan, encompassing not only the city of Detroit, but the larger Detroit metropolitan area." It rejected the state defendants' arguments that no state action caused the segregation of Detroit schools, and the intervening suburban districts' contention that inter-district relief was inappropriate unless the suburban districts had themselves committed violations. The court concluded:

> "[I]t is proper for the court to consider metropolitan plans directed toward the desegregation of the Detroit public schools as an alternative to the present intra-city desegregation plans before it and, in the event that the court finds such intra-city plans inadequate to desegregate such schools, the court is of the opinion that it is required to consider a metropolitan remedy for desegregation." Pet. App., at 51a.

(b) On March 28, 1972, the District Court issued its findings and conclusions on the three "Detroit-only" plans submitted by the city Board and the respondents. It found that the best of the three plans "would make the Detroit system more identifiably Black... thereby increasing the flights of Whites from the city and the system." Pet. App., at 53a–55a. From this the court concluded that the plan "would not accomplish desegregation within the corporate geographical limits of the city." *Id.*, at 56a. Accordingly, the District Court held that "it must look beyond the limits of the Detroit school district for a solution to the problem," and that "[s]chool district lines are simply matters of political convenience and may not be used to deny constitutional rights." *Id.*, at 57a.

(c) During the period from March 28, 1972 to April 14, 1972, the District Court conducted hearings on a metropolitan plan. Counsel for the petitioning intervenors was allowed to participate in these hearings, but he was ordered to confine his argument to "the size and expanse of the metropolitan plan" without addressing the intervenors' opposition to such a remedy or the claim that a finding of a constitutional violation by the intervenor districts was an

[13] This rather abbreviated briefing schedule was maintained despite the fact that the District Court had deferred consideration of a motion made eight months earlier, to bring the suburban districts into the case. See n. 8, *supra*.

essential predicate to any remedy involving them. Thereafter, on June 14, 1972, the District Court issued its ruling on the "desegregation area" and related findings and conclusions. The court acknowledged at the outset that it had "taken no proofs with respect to the establishment of the boundaries of the 86 public school districts in the counties [in the Detroit area], nor on the issue of whether, with the exclusion of the city of Detroit school district, such school districts have committed acts of *de jure* segregation." Nevertheless, the court designated 53 of the 85 suburban school districts plus Detroit as the "desegregation area" and appointed a panel to prepare and submit "an effective desegregation plan" for the Detroit schools that would encompass the entire desegregation area.[14] The plan was to be based on 15 clusters, each containing part of the Detroit system and two or more suburban districts, and was to "achieve the greatest degree of actual desegregation to the end that, upon implementation, no school, grade or classroom [would be] substantially disproportionate to the overall pupil racial composition. Pet. App. 101a–102a.

(d) On July 11, 1972, and in accordance with a recommendation by the court-appointed desegregation panel, the District Court ordered the Detroit Board of Education to purchase or lease "at least" 295 school buses for the purpose of providing transportation under an interim plan to be developed for the 1972–1973 school year. The costs of this acquisition were to be borne by the state defendants. Pet. App., at 106a–107a.

On June 12, 1973, a divided Court of Appeals, sitting en banc, affirmed in part, vacated in part and remanded for further proceedings. 484 F. 2d 215 (CA6 1973).[15] The Court of Appeals held, first, that the record supported the District Court's findings and conclusions on the constitutional violations committed by the Detroit Board, 484 F. 2d, at 221–238, and by the state defendants, 484 F. 2d, at 239–241.[16] It stated that the acts of racial discrimination shown in

[14] The 53 school districts outside the city of Detroit that were included in the court's desegregation area" have a combined student population of approximately 503,000 students compared to Detroit's approximately 276,000 students. Nevertheless, the District Court directed that the intervening districts should be represented by only one member on the desegregation panel while the Detroit Board of Education was granted three panel members. Pet. App., at 99a.

[15] The District Court had certified most of the foregoing rulings for interlocutory review pursuant to 28 U. S. C. § 1292 (b) (I App. 265–266) and the case was initially decided on the merits by a panel of three judges. However, the panel's opinion and judgment were vacated when it was determined, to rehear the case en banc, 484 F. 2d 215, 218 (CA6 1973).

[16] With respect to the State's violations, the Court of Appeals held: (1) that, since the city Board is an instrumentality of the State and subordinate to the State Board, the segregative actions of the Detroit Board "are the actions of an agency of the State" (484 F. 2d, at 238); (2) that the state legislation rescinding Detroit's voluntary desegregation plan contributed to increasing segregation in the Detroit schools (*Id.*); (3) that under state law prior to 1962 the state Board had authority over school construction plans and must therefore be held responsible "for the segregative results" (*Id.*); (4) that the "State statutory scheme of support of transportation for school children directly discriminated against Detroit" (484 F. 2d, at 240) by not providing transportation funds to Detroit on the same basis as funds were provided to suburban districts (484 F. 2d, at 238); and (5) that the transportation of Negro students from one suburban district to a Negro school in Detroit must have had the "approval, tacit or express, of the State Board of Education." (*Id.*)

the record are "causally related to the substantial amount of segregation found in the Detroit school system," 484 F. 2d, at 241, and that "the District Court was, therefore, authorized and required to take effective measures to desegregate the Detroit Public School System." 484 F. 2d 242.

The Court of Appeals also agreed with the District Court that "any less comprehensive a solution than a metropolitan area plan would result in an all black school system immediately surrounded by practically all white suburban school systems, with an overwhelming white majority population in the total metropolitan area." 484 F. 2d, at 245. The court went on to state that it could "not see how such segregation can be any less harmful to the minority students than if the same result were accomplished within one school district." 484 F. 2d, 245.

Accordingly, the Court of Appeals concluded that "the only feasible desegregation plan involves the crossing of the boundary lines between the Detroit School District and adjacent or nearby school districts for the limited purpose of providing an effective desegregation plan." 484 F. 2d, at 249. It reasoned that such a plan would be appropriate because of the State's violations, and could be implemented because of the State's authority to control local school districts. Without further elaboration, and without any discussion of the claims that no constitutional violation by the outlying districts had been shown and that no evidence on that point had been allowed, the Court of Appeals held:

> "[T]he State has committed *de jure* acts of segregation and . . . the State controls the instrumentalities whose action is necessary to remedy the harmful effects of the State acts." *Ibid.*

An inter-district remedy was thus held to be "within the equity powers of the District Court." 484 F. 2d, at 250.[17]

The Court of Appeals expressed no views on the propriety of the District Court's composition of the metropolitan "desegregation area." It held that all suburban school districts that might be affected by any metropolitanwide remedy should, under Rule 19, Fed. Rule Civ. Proc., be made parties to the case on remand and be given an opportunity to be heard with respect to the scope and implementation of such a remedy. 484 F. 2d, at 251–252. Under the terms of the remand, however, the District Court was "not required" to receive further evidence on the issue of segregation in the Detroit schools or on the propriety of a Detroit-only remedy, or on the question of whether the affected districts had committed any violation of the constitutional rights of Detroit pupils or others. 484 F. 2d, at 252. Finally, the Court of Appeals vacated the District Court's order directing the acquisition of school buses, subject to the right of the District Court to consider reimposing the order "at the appropriate time." 484 F. 2d 252.

[17] The court sought to distinguish *Bradley* v. *School Board of the City of Richmond, Virginia*, 462 F. 2d 1058 (CA4), affirmed by an equally divided Court, 412 U. S. 92, on the grounds that the District Court in that case had ordered an actual consolidation of three school districts and that Virginia's constitution and statutes, unlike Michigan's, did not give the local boards exclusive power to operate the public schools. 484 F. 2d, at 251.

II

Ever since *Brown* v. *Board of Education,* 347 U. S. 483 (1954), judicial consideration of school desegregation cases has begun with the standard that:

> "[I]n the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." 347 U. S., at 495.

This has been reaffirmed time and again as the meaning of the Constitution and the controlling rule of law.

The target of the *Brown* holding was clear and forthright: the elimination of state mandated or deliberately maintained dual school systems with certain schools for Negro pupils and others for White pupils. This duality and racial segregation was held to violate the Constitution in the cases subsequent to 1954, including particularly *Green* v. *County School Board of New Kent County,* 391 U. S. 430 (1968); *Raney* v. *Board of Education,* 391 U. S. 443 (1968); *Monroe* v. *Board of Commissioners,* 391 U. S. 450 (1968); *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U. S. 1 (1971); *Wright* v. *Council of City of Emporia,* 407 U. S. 451 (1972); *United States* v. *Scotland Neck Board of Education,* 407 U. S. 484.

The *Swann* case, of course, dealt

> "with the problem of defining in more precise terms than heretofore the scope of the duty of school authorities and district courts in implementing *Brown I* and the mandate to eliminate dual systems and establish unitary systems at once." 402 U. S., at 6.

In *Brown* v. *Board of Education,* 349 U. S. 294 (1955) (*Brown II*), the Court's first encounter with the problem of remedies in school desegregation cases, the Court noted that:

> "In fashioning and effectuating the decrees the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs." *Brown* v. *Board of Education,* 349 U. S. 294, 299–300 (1955).

In further refining the remedial process, *Swann* held, the task is to correct, by a balancing of the individual and collective interests, "the condition that offends the Constitution." A federal remedial power may be exercised "only on the basis of a constitutional violation" and, "[a]s with any equity case, the nature of the violation determines the scope of the remedy." 402 U. S., at 15, 16.

Proceeding from these basic principles, we first note that in the District Court the complainants sought a remedy aimed at the *condition* alleged to affend the Constitution—the segregation within the Detroit City school district.[18] The court acted on this theory of the case and in its initial ruling on the "Desegregation Area" stated:

[18] Although the list of issues presented for review in petitioners' briefs and petitions for writs of certiorari do not include arguments on the findings of segregatory violations on the part of the Detroit defendants, two of the petitioners argue in brief that these findings constitute error. Supreme Court Rules 23 (1) (c) and 40 (1) (d) (2), at a minimum, limit our review of

> "The task before this court, therefore, is now, and ... has always been, how to desegregate the Detroit public schools." Pet. App., at 61a.

Thereafter, however, the District Court abruptly rejected the proposed Detroit-only plans on the ground that "while it would provide a racial mix more in keeping with the Black-White proportions of the student population, [it] would accentuate the racial identifiability of the [Detroit] district as a Black school system, and would not accomplish desegregation." Pet. App., at 56a. "[T]he racial composition of the student body is such," said the court, "that the plan's implementation would clearly make the entire Detroit public school system racially identifiable" (Pet. App., at 54a), "leav[ing] many of its schools 75 to 90 percent Black." Pet. App., at 55a. Consequently, the court reasoned, it was imperative to "look beyond the limits of the Detroit school district for a solution to the problem of segregation in the Detroit schools ..." since "school district lines are simply matters of political convenience and may not be used to deny constitutional rights." *Id.*, at 57a. Accordingly, the District Court proceeded to redefine the relevant area to include areas of predominantly White pupil population in order to ensure that "upon implementation, no school, grade or classroom [would be] substantially disproportionate to the overall racial composition" of the entire metropolitan area.

While specifically acknowledging that the District Court's findings of a condition of segregation were limited to Detroit, the Court of Appeals approved the use of a metropolitan remedy largely on the grounds that it is:

> "impossible to declare 'clearly erroneous' the District Judge's conclusion that any Detroit only segregation plan will lead directly to a single segregated Detroit school district overwhelmingly black in all of its schools, surrounded by a ring of suburbs and suburban school districts overwhelmingly white in composition in a state in which the racial composition is 87 percent white and 13 percent black." 484 F. 2d, at 249.

Viewing the record as a whole, it seems clear that the District Court and the Court of Appeals shifted the primary focus from a Detroit remedy to the metropolitan area only because of their conclusion that total desegregation of Detroit would not produce the racial balance which they preceived as desirable. Both courts proceeded on an assumption that the Detroit schools could not be truly desegregated—in their view of what constituted desegregation—unless the racial composition of the student body of each school substantially reflected the racial composition of the population of the metropolitan area as a whole. The metropolitan area was then defined as Detroit plus 53 of the outlying school districts. That this was the approach the District Court expressly and frankly employed is shown by the order which expressed the court's view of the constitutional standard:

> "Within the limitations of reasonable travel time and distance factors, pupil reassignments shall be effected within the clusters described in Exhibit P. M. 12 so

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the Detroit violation findings to "plain error," and, under our decision last Term in *Keyes* v. *School District No. 1, Denver, Colorado,* 413 U. S. 189, the findings appear to be correct.

> as to achieve the greatest degree of actual desegregation to the end that, upon implementation, *no school, grade or classroom* [will be] substantially disproportionate to the overall pupil racial composition." Petn. App., at 101a–102a (emphasis added).

In *Swann,* which arose in the context of a single independent school district, the Court held:

> "If we were to read the holding of the District Court to require as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse." 402 U. S., at 24.

The clear import of this language from *Swann* is that desegregation, in the sense of dismantling a dual school system, does not require any particular racial balance in each "school, grade or classroom." [19] See *Spencer* v. *Kugler,* 404 U. S. 1027 (1972).

Here the District Court's approach to what constituted "actual desegregation" raises the fundamental question, not presented in *Swann,* as to the circumstances in which a federal court may order desegregation relief that embraces more than a single school district. The court's analytical starting point was its conclusion that school district lines are no more than arbitrary lines on a map "drawn for political convenience." Boundary lines may be bridged where there has been a constitutional violation calling for inter-district relief, but, the notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. See *Wright* v. *Council of the City of Emporia,* 407 U. S. 451, 469. Thus, in *San Antonio School District* v. *Rodriguez,* 411 U. S. 1, 50, we observed that local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages "experimentation, innovation and a healthy competition for educational excellence."

The Michigan educational structure involved in this case, in common with

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[19] Disparity in the racial composition of pupils within a single district may well constitute a "signal" to a district court at the outset, leading to inquiry into the causes accounting for a pronounced racial identifiability of schools within one school system. In *Swann,* for example, we were dealing with a large but single, independent school system and a unanimous Court noted: "Where the proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race [the school authority has] the burden of showing that such school assignments are genuinely nondiscriminatory." *Id.,* p. 26. See also *Keyes, supra,* 413 U. S., at 208. However, the use of significant racial imbalance in schools within an autonomous school district as a signal which operates simply to shift the burden of proof, is a very different matter from equating racial imbalance with a constitutional violation calling for a remedy. *Keyes, supra,* also involved a remedial order within a single autonomous school district.

most States, provides for a large measure of local control[20] and a review of the scope and character of these local powers indicates the extent to which the inter-district remedy approved by the two courts could disrupt and alter the structure of public education in Michigan. The metropolitan remedy would require, in effect, consolidation of 54 independent school districts historically administered as separate units into a vast new super school district. See n. 10, *supra.* Entirely apart from the logistical and other serious problems attending large-scale transportation of students, the consolidation would give rise to an array of other problems in financing and operating this new school system. Some of the more obvious questions would be: What would be the status and authority of the present popularly elected school boards? Would the children of Detroit be within the jurisdiction and operating control of a school board elected by the parents and residents of other districts? What board or boards would levy taxes for school operations in these 54 districts constituting the consolidated metropolitan area? What provisions could be made for assuring substantial equality in tax levies among the 54 districts, if this were deemed requisite? What provisions would be made for financing? Would the validity of long-term bonds be jeopardized unless approved by all of the component districts as well as the State? What body would determine that portion of the curricula now left to the discretion of local school boards? Who would establish attendance zones, purchase school equipment, locate and construct new schools, and indeed attend to all the myriad day-to-day decisions that are necessary to school operations affecting potentially more than three quarters of a million pupils? See n. 10, *supra.*

It may be suggested that all of these vital operational problems are yet to be resolved by the District Court, and that this is the purpose of the Court of Appeals' proposed remand. But it is obvious from the scope of the inter-district remedy itself that absent a complete restructuring of the laws of Michigan relating to school districts the District Court will become first, a *de facto* "legislative authority" to resolve these complex questions, and then the "school super-

[20] Under the Michigan School Code of 1955, the local school district is an autonomous political body corporate, operating through a Board of Education popularly elected. Mich. Comp. Laws Ann. §§ 340.27, 340.55, 340.107, 340.148–9, 340.188. As such, the day-to-day affairs of the school district are determined at the local level in accordance with the plenary power to acquire real and personal property, Mich. Comp. Laws Ann. (MCLA) §§ 340.26; 340.77; 340.113; 340.165; 340.192; 340.352; to hire and contract with personnel, MCLA § 340.569; § 340.574; to levy taxes for operations, MCLA § 340.563; to barrow against receipts, MCLA § 340.567; to determine the length of school terms, MCLA § 340.575; to control the admission of nonresident students, MCLA § 340.582; to determine courses of study, MCLA § 340.583; to provide a kindergarten program, MCLA § 340.584; to establish and operate vocational schools, MCLA § 340.585; to offer adult education programs, MCLA § 340.586; to establish attendance areas, MCLA § 340.589; to arrange for transportation of nonresident students, MCLA § 340.591; to acquire transportation equipment, MCLA § 340.594; to receive gifts and bequests for educational purposes, MCLA § 340.605; to employ an attorney, MCLA § 340.609; to suspend or expel students, MCLA § 340.613; to make rules and regulations for the operation of schools, MCLA § 340.614; to cause to be levied authorized millage, MCLA § 340.643a; to acquire property by eminent domain, MCLA § 340.711 *et seq.;* and to approve and select textbooks, MCLA § 340.882.

intendent" for the entire area. This is a task which few, if any, judges are qualified to perform and one which would deprive the people of control of schools through their elected representatives.

Of course, no state law is above the Constitution. School district lines and the present laws with respect to local control, are not sacrosanct and if they conflict with the Fourteenth Amendment federal courts have a duty to prescribe appropriate remedies. See, *e. g., Wright* v. *Council of City of Emporia,* 407 U. S. 451; *United States* v. *Scotland Neck Board of Education,* 407 U. S. 484 (state or local officials prevented from carving out a new school district from an existing district that was in process of dismantling a dual school system); cf. *Haney* v. *County Board of Education of Sevier County,* 429 F. 2d 364 (CA8 1969) (State contributed to separation of races by drawing of school district lines); *United States* v. *Texas,* 321 F. Supp. 1043 (ED Tex. 1970), aff'd, 447 F. 2d 441 (CA5 1971), cert. denied, *sub nom. Edgar* v. *United States,* 404 U. S. 1016 (one or more school districts created and maintained for one race). But our prior holdings have been confined to violations and remedies within a single school district. We therefore turn to address, for the first time, the validity of a remedy mandating cross-district or inter-district consolidation to remedy a condition of segregation found to exist in only one district.

The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation. *Swann, supra,* at 16. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imopsing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation. Thus an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an inter-district remedy would be appropriate to eliminate the inter-district segregation directly caused by the constitutional violation. Conversely, without an inter-district violation and inter-district effect, there is no constitutional wrong calling for an inter-district remedy.

The record before us, voluminous as it is, contains evidence of *de jure* segregated conditions only in the Detroit schools; indeed, that was the theory on which the litigation was initially based and on which the District Court took evidence. See pp. 18–19, *supra.* With no showing of significant violation by the 53 outlying school districts and no evidence of any inter-district violation or effect, the court went beyond the original theory of the case as framed by the pleadings and mandated a metropolitan area remedy. To approve the remedy ordered by the court would impose on the outlying districts, not shown to have committed any constitutional violation, a wholly impermissible remedy based on a standard not hinted at in *Brown I* and *II* or any holding of this Court.

In dissent MR. JUSTICE WHITE and MR. JUSTICE MARSHALL undertake to dem-

onstrate that agencies having statewide authority participated in maintaining the dual school system found to exist in Detroit. They are apparently of the view that once such participation is shown, the District Court should have a relatively free hand to reconstruct school districts outside of Detroit in fashioning relief. Our assumption, *arguendo,* see *post,* p. ——, that state agencies did participate in the maintenance of the Detroit system, should make it clear that it is not on this point that we part company.[21] The difference between us arises instead from established doctrine laid down by our cases. *Brown, supra, Green, supra, Swann, supra, Scotland Neck, supra,* and *Emporia, supra,* each addressed the issue of constitutional wrong in terms of an established geographic and administrative school system populated by both Negro and White children. In such a context, terms such as "unitary" and "dual" systems, and "racially identifiable schools," have meaning, and the necessary federal authority to remedy the constitutional wrong is firmly established. But the remedy is necessarily designed, as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. Disparate treatment of White and Negro students occurred within the Detroit school system, and not elsewhere, and on this record the remedy must be limited to that system. *Swann, supra,* at 16.

The constitutional right of the Negro respondents residing in Detroit is to attend a unitary school system in that district. Unless petitioners drew the district lines in a discriminatory fashion, or arranged for White students residing in the Detroit district to attend schools in Oakland and Macomb Counties, they were under no constitutional duty to make provisions for Negro students to do so. The view of the dissenters, that the existence of a dual system *in Detroit* can be made the basis for a decree requiring cross-district transportation of pupils cannot be supported on the grounds that it represents merely the devising of a suitably flexible remedy for the violation of rights already established by our prior decisions. It can be supported only by drastic expansion of the constitutional right itself, an expansion without any support in either constitutional principle or precedent.[22]

[21] Since the Court has held that a resident of a school district has a fundamental right protected by the Federal Constitution to vote in a district election, it would seem incongruous to disparage the importance of the school district in a different context. *Kramer* v. *Union Free School District No. 15,* 395 U. S. 621, 626. While the district there involved was located in New York, none of the facts in our possession suggest that the relation of school districts to the State is significantly different in New York than it is in Michigan.

[22] The suggestion in the dissent of MR. JUSTICE MARSHALL that schools which have a majority of Negro students are not "desegregated," whatever the racial makeup of the school district's population and however neutrally the district lines have been drawn and administered, finds no support in our prior cases. In *Green* v. *County School Board of New Kent County,* 391 U.S. 403 (1968), for example, this Court approved a desegregation plan which would have resulted in each of the schools within the district having a racial composition of 57% Negro and 43% White. In *Wright* v. *Council of the City of Emporia,* 407 U. S. 451 (1972), the optimal desegregation plan would have resulted in the schools being 66% Negro and 34% White, substantially the same percentages as could be obtained under one of the plans involved in this case. And in *United States* v. *Scotland Neck Board of Education,* 407 U. S. 484, 491, n. 5 (1972), a desegregation plan was implicitly approved for a school district which had a racial com-

III

We recognize that the six-volume record presently under consideration contains language and some specific incidental findings thought by the District Court to afford a basis for inter-district relief. However, these comparatively isolated findings and brief comments concern only one possible inter-district violation and are found in the context of a proceeding that, as the District Court conceded, included no proofs of segregation practiced by any of the 85 suburban school districts surrounding Detroit. The Court of Appeals, for example, relied on five factors which, it held, amounted to unconstitutional state action with respect to the violations found in the Detroit system:

(1) It held the State derivatively responsible for the Detroit Board's violations on the theory that actions of Detroit as a political subdivision of the State were attributable to the State. Accepting, *arguendo,* the correctness of this finding of State responsibility for the segregated conditions within the city of Detroit, it does not follow that an inter-district remedy is constitutionally justified or required. With a single exception, discussed later, there has been no showing that either the State or any of the 85 outlying districts engaged in activity that had a cross-district effect. The boundaries of the Detroit School District, which are coterminous with the boundaries of the city of Detroit, were established over a century ago by neutral legislation when the city was incorporated; there is no evidence in the record, nor is there any suggestion by the respondents, that either the original boundaries of the Detroit School District, or any other school district in Michigan, were established for the purpose of creating, maintaining or perpetuating segregation of races. There is no claim and there is no evidence hinting that petitioners and their predecessors, or the 40-odd other school districts in the tricounty area—but outside the District Court's "desegregation area"—have ever maintained or operated anything but unitary school systems. Unitary school systems have been required for more than a century by the Michigan Constitution as implemented by state law.[23] Where the schools of only one district have been affected, there is no constitutional power in the courts to decree relief balancing the racial composition of that district's schools with those of the surrounding districts.

(2) There was evidence introduced at trial that, during the late 1950's, Carver

position of 77% Negro and 22% White. In none of these cases was it even intimated that "actual desegregation" could not be accomplished as long as the number of Negro students was greater than the number of White students.

The dissents also seem to attach importance to the metropolitan character of Detroit and neighboring school districts. But the constitutional principles applicable in school desegregation cases cannot vary in accordance with the size or population dispersal of the particular city, county, or school district as compared with neighboring areas.

[23] *Ex rel. Workman,* 18 Mich. 400 (1869), Act 34, § 28 of Mich. Pub. Acts of 1867. The Michigan Constitution and laws provide that "Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin," Mich. Const. 1963, Art. 8, § 2; that "No separate school or department shall be kept for any person or persons on account of race or color," Mich. Comp. Laws Ann., § 340.355; and that "All persons, residents of a school district . . . shall have an equal right to attend school therein," Mich. Comp. Laws Ann., § 340.356. See also Act 319, Part II, c. 2, § 9, Mich. Pub. Acts of 1927.

School District, a predominantly Negro suburban district, contracted to have Negro high school students sent to a predominantly Negro school in Detroit. At the time, Carver was an independent school district that had no high school because, according to the trial evidence, "Carver District... did not have a place for adequate high school facilities." Pet. App., at 138a. Accordingly, arrangements were made with Northern High School in the abutting Detroit School District so that the Carver high school students could obtain a secondary school education. In 1960 the Oak Park School District, a predominantly White suburban district, annexed the predominantly Negro Carver School District, through the initiative of local officials. *Ibid.* There is, of course, no claim that the 1960 annexation had segregatory purpose or result or that Oak Park now maintains a dual system.

According to the Court of Appeals, the arrangement during the late 1950's which allowed Carver students to be educated within the Detroit District was dependent upon the "tacit or express" approval of the State Board of Education and was the result of the refusal of the White suburban districts to accept the Carver students. Although there is nothing in the record supporting the Court of Appeals' supposition that suburban White schools refused to accept the Carver students, it appears that this situation, whether with or without the State's consent, may have had a segregatory effect on the school populations of the two districts involved. However, since "the nature of the violation determines the scope of the remedy," 402 U. S., at 15–16, this isolated instance affecing two of the school districts would not justify the broad metropolitan-wide remedy contemplated by the District Court and approved by the Court of Appeals, particularly since it embraced potentially 52 districts having no responsibility for the arrangement and involved 503,000 pupils in addition to Detroit's 276,000 students.

(3) The Court of Appeals cited the enactment of state legislation (Act 48) which had the effect of rescinding Detroit's voluntary desegregation plan (the April 7 Plan). That plan, however, affected only 12 of 21 Detroit high schools and had no causal connection with the distribution of pupils by race between Detroit and the other school districts within the tri-county area.

(4) The court relied on the State's authority to supervise school site selection and to approve building construction as a basis for holding the State responsible for the segregative results of the school construction program in Detroit. Specifically, the Court of Appeals asserted that during the period between 1949 and 1962 the State Board of Education exercised general authority as overseer of site acquisitions by local boards for new school construction, and suggested that this State approved school construction "fostered segregation throughout the Detroit Metropolitan area." Pet. App., at 157a. This brief comment, however, is not supported by the evidence taken at trial since that evidence was specifically limited to proof that school site acquisition and school construction within the city of Detroit produced *de jure* segregation *within* the city itself. Pet. App., at 144a–151a. Thus, there was no evidence suggesting that the State's activities with respect to either school construction or site acquisition within Detroit affected the racial composition of the school population outside Detroit or, con-

versely, that the State's school construction and site acquisition activities within the outlying districts affected the racial composition of the schools within Detroit.

(5) The Court of Appeals also relied upon the District Court's finding that:

> "This and other financial limitations, such as those on bonding and the working of the state aid formula whereby suburban districts were able to make far larger per pupil expenditures despite less tax effect, have created and perpetuated systematic educational inequalities." Pet. App., at 152a.

However, neither the Court of Appeals nor the District Court offered any indication in the record or in their opinions as to how, if at all, the availability of state financed aid for some Michigan students outside Detroit but not within Detroit, might have affected the racial character of any of the State's school districts. Furthermore, as the respondents recognize, the application of our recent ruling in *San Antonio Independent School District* v. *Rodriguez,* 411 U. S. 1, to this state education financing system is questionable, and this issue was not addressed by either the Court of Appeals or the District Court. This, again, underscores the crucial fact that the theory upon which the case proceeded related solely to the establishment of Detroit city violations as a basis for desegregating Detroit schools and that, at the time of trial, neither the parties nor the trial judge were concerned with a foundation for inter-district relief.[24]

IV

Petitioners have urged that they were denied due process by the manner in which the District Court limited their participation after intervention was allowed thus precluding adequate opportunity to present evidence that they had committed no acts having a segregative effect in Detroit. In light of our holding that absent an inter-district violation there is no basis for an inter-district remedy, we need not reach these claims. It is clear, however, that the District Court, with the approval of the Court of Appeals, has provided an inter-district remedy in the face of a record which shows no constitutional violations that would call for equitable relief except within the city of Detroit. In these circumstances there was no occasion for the parties to address, or for the District Court to consider whether there were racially discriminatory acts for which any of the 53 outlying districts were responsible and which had direct and significant segregative effect on schools of more than one district.

We conclude that the relief ordered by the District Court and affirmed by the Court of Appeals was based upon an erroneous standard and was unsupported by record evidence that acts of the outlying districts affected the discrimination found to exist in the schools of Detroit. Accordingly, the judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion leading to prompt formulation of a de-

[24] Apparently, when the District Court, *sua sponte,* abruptly altered the theory of the case to include the possibility of multidistrict relief, neither the plaintiffs nor the trial judge considered amending the complaint to embrace the new theory.

cree directed to eliminating the segregation found to exist in Detroit city schools, a remedy which has been delayed since 1970.

Reversed and remanded.

MR. JUSTICE STEWART, concurring.

In joining the opinion of the Court, I think it appropriate, in view of some of the extravagant language of the dissenting opinions, to state briefly my understanding of what it is that the Court decides today.

The respondents commenced this suit in 1970, claiming only that a constitutionally impermissible allocation of educational facilities along racial lines had occurred in public schools within a single school district whose lines were coterminous with those of the city of Detroit. In the course of the subsequent proceedings, the District Court found that public school officials had contributed to racial segregation within that district by means of improper use of zoning and attendance patterns, optional attendance areas, and building and site selection. This finding of a violation of the Equal Protection Clause was upheld by the Court of Appeals, and is accepted by this Court today. See *ante*, p. 18, n. 18. In the present posture of the case, therefore, the Court does not deal with questions of substantive constitutional law. The basic issue now before the Court concerns, rather, the appropriate exercise of federal equity jurisdiction.[25]

No evidence was adduced and no findings were made in the District Court concerning the activities of school officials in districts outside the city of Detroit, and no school officials from the outside districts even participated in the suit until after the District Court had made the initial determination that is the focus of today's decision. In spite of the limited scope of the inquiry and the findings, the District Court concluded that the only effective remedy for the constitutional violations found to have existed within the city of Detroit was a desegregation plan calling for busing pupils to and from school districts outside the city. The District Court found that any desegregation plan operating wholly "within the corporate geographical limits of the city" would be deficient since it "would clearly make the entire Detroit public school system racially identifiable as Black." Pet. App. 161a–162a. The Court of Appeals, in affirming the decision that an inter-district remedy was necessary, noted that a plan limited to the city of Detroit "would result in an all black school system immediately surrounded by practically all white suburban school systems, with an overwhelmingly white majority population in the total metropolitan area." 484 F. 2d 215, 245.

The courts were in error for the simple reason that the remedy they thought necessary was not commensurate with the constitutional violation found. Within

[25] As this Court stated in *Brown* v. *Board of Education*, 349 U. S. 294, 300. "[E]quity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These [school desegregation] cases call for the exercise of these traditional attributes of equity power."

a single school district whose officials have been shown to have engaged in unconstitutional racial segregation, a remedial decree that affects every individual school may be dictated by "common sense," see *Keyes* v. *School District No. 1, Denver, Colorado,* 413 U. S. 189, 203 (1973), and indeed may provide the only effective means to eliminate segregation "root and branch," *Green* v. *County School Board,* 391 U. S. 430, 437 (1968), and to "effectuate a transition to a racially nondiscriminatory school system." *Brown* v. *Board of Education,* 349 U. S. 294, 301. See *Keyes, supra,* 413 U. S., at 198–205. But in this case the Court of Appeals approved the concept of a remedial decree that would go beyond the boundaries of the district where the constitutional violation was found, and include schools and school children in many other school districts that have presumptively been administered in complete accord with the Constitution.

The opinion of the Court convincingly demonstrates, *ante,* pp. 22–23, that traditions of local control of schools, together with the difficulty of a judicially supervised restructuring of local administration of schools, render improper and inequitable such an inter-district response to a constitutional violation found to have occurred only within a single school district.

This is not to say, however, that an inter-district 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 (CA8 1969); cf. *Wright* v. *Council of 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 (ED Tex. 1970), aff'd, 447 F. 2d 441 (CA5 1971); *Turner* v. *Warren County Board of Education,* 313 F. Supp. 380 (EDNC 1970); 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.

In this case, however, no such inter-district violation was shown. Indeed, no evidence at all concerning the administration of schools outside the city of Detroit was presented other than the fact that these schools contained a higher proportion of white pupils than did the schools within the city. Since the mere fact of different racial compositions in contiguous districts does not itself imply or constitute a violation of the Equal Protection Clause in the absence of a showing that such disparity was imposed, fostered, or encouraged by the State or its political subdivisions, it follows that no inter-district violation was shown in this case.[26] The formulation of an inter-district remedy was thus simply not

[26] My Brother MARSHALL seems to ignore this fundamental fact when he states, *post.* at 19, that "the most essential finding [made by the District Court] was that Negro children in Detroit had been confined by intentional acts of segregation to a growing core of Negro schools surrounded by a receding ring of white schools." This conclusion is simply not substantiated by the record presented in this case. The record here does support the claim made by the respondents that white and Negro students within Detroit who otherwise would have attended school together were separated by acts of the State or its subdivision. However, segregative acts within the city alone cannot be presumed to have produced—and no factual showing was

responsive to the factual record before the District Court and was an abuse of that court's equitable powers.

In reversing the decision of the Court of Appeals this Court is in no way turning its back on the proscription of state-imposed segregation first voiced in *Brown* v. *Board of Education*, 347 U. S. 483 (1954), or on the delineation of remedial powers and duties most recently expressed in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971). In *Swann* the Court addressed itself to the range of equitable remedies available to the courts to effectuate the desegregation mandated by *Brown* and its progeny, noting that the task in choosing appropriate relief is "to correct . . . the condition that offends the Constitution," and that "the nature of the violation determines the scope of the remedy . . . ." 402 U. S., at 16.

The disposition of this case thus falls squarely under these principles. The only "condition that offends the Constitution" found by the District Court in this case is the existence of officially supported segregation in and among public schools in Detroit itself. There were no findings that the differing racial composition between schools in the city and in the outlying suburbs was caused by official activity of any sort. It follows that the decision to include in the desegregation plan pupils from school districts outside Detroit was not predicated upon any constitutional violation involving those school districts. By approving a remedy that would reach beyond the limits of the city of Detroit to correct a constitutional violation found to have occurred solely within that city the Court of Appeals thus went beyond the governing equitable principles established in this Court's decisions.

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made that they did produce—an increase in the number of Negro students *in the city as a whole*. It is this essential fact of a predominantly Negro school population in Detroit—caused by unknown and perhaps unknowable factors such as in-migration, birth rates, economic changes, or cumulative acts of private racial fears—that accounts for the "growing core of Negro schools," a "core" that has grown to include virtually the entire city. The Constitution simply does not allow federal courts to attempt to change that situation unless and until it is shown that the State, or its political subdivisions, have contributed to cause the situation to exist. No record has been made in this case showing that the racial composition of the Detroit school population or that residential patterns within Detroit and in the surrounding areas were in any significant measure caused by governmental activity, and it follows that the situation over which my dissenting Brothers express concern cannot serve as the predicate for the remedy adopted by the District Court and approved by the Court of Appeals.