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John Mathews

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By John Mathews†

The Supreme Court's recent decision on school desegregation in Detroit goes to the heart of state power and obligation in education. It means that for the conceivable future—with few exceptions—buses will not be allowed to transport children between cities and suburbs in order to desegregate schools.

It also means that, perhaps for generations to come, school systems of most of the nation's largest cities, and of many medium-sized cities, will continue to be overwhelmingly black. Two identifiable school societies—black urban systems, surrounded by white suburban systems—will become the rule in most metropolitan areas.

Where city and county systems have already merged, and where court suits can convince federal judges that the stiff burden of proof set by the Supreme Court can be met to warrant interdistrict busing, there will be some exceptions.

It is conceivable that in the distant future, increased black income will make possible "black flight" to the suburbs and, perhaps, white return to rejuvenated cities. But for the time being, at least, ironically in the anniversary year of the Brown desegregation decision of 1954 and the Civil Rights Act of 1964, the nation's highest court has refused to open up a whole new era of school desegregation and has shied away from making the public schools the major instrument for desegregating the nation's cities and suburbs.

The four Nixon appointees—Chief Justice Warren E. Burger, and Justices Lewis F. Powell Jr., Harry A. Blackmun and William H. Rehnquist—were joined by Justice Potter Stewart to make up the majority in the 5-4 Detroit decision.

Their opinion, written by Chief Justice Burger, took pains to point out that the court was not reneging on its school desegregation decisions of the past 20 years, most of which have been decided unanimously. The obligation to desegregate within established school boundaries, both in the South and outside of it where intentional segregation has been proven, remains intact.

Detroit and Louisville, the two majority-black school systems directly involved in the latest decision, as well as other systems—such as Indianapolis—where metropolitan school desegregation decisions were pending, must still desegregate within their existing boundaries.

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† Education Reporter, Washington Star-News.

In an angry dissent, one of three minority views filed in the case, Justice Thurgood Marshall castigated the court majority for taking a "giant step backwards." That view may have been correct, however, only in the sense that the court was being asked to make a quantum jump forward and it decided, in effect, to stand still.

Another dissenter, Justice William O. Douglas, said the decision amounted to a return to the old separate-but-equal doctrine that the court had enunciated 78 years ago and had rejected in 1954.

What the latest suits were asking the court to do was declare flatly that the constitutional powers of the states to establish public schools and to insure equal educational opportunity and equal protection of the laws overshadowed local control of schools and their boundaries. U.S. District Judge Stephen J. Roth had found in the original Detroit decision—later upheld by the 6th U.S. Circuit Court of Appeals, 6-3—that arbitrary school boundaries "drawn for political convenience" should not stand in the way of desegregating any majority-black school district.

Judge Roth and the appeals court found a number of discriminatory state actions contributing to the isolation of black children in Detroit schools. These included: a state law rescinding a city school board desegregation plan; state appropriations for local school busing, except in Detroit; state oversight, before 1962, of school construction plans and of school sites afterwards, and the tacit approval by the state of a plan in which black students in one suburban school system attended high school in Detroit, instead of in another suburban system.

But the Burger opinion rejected the evidence of state action as insufficient. No significant direct state government action, or collusion among suburbs, city or state, had been shown to have resulted in the forced isolation of blacks in the city school system. The district and appeals court, Burger maintained, had approved a metropolitan remedy—never even suggested by the original black plaintiffs—simply because "total desegregation of Detroit would not produce the racial balance which they perceived as desirable."

The chief justice went on to say this about state and local power:

"Boundary lines may be bridged where there has been a constitutional violation calling for interdistrict 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."

In addition, Burger cited language from the 1973 school-finance decision in the Rodriguez case that there was no constitutional compulsion to equalize spending between local school districts. The court had said then, Burger noted, 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.' "

Just as Justice Powell had worried in the Rodriquez opinion that a mandated equalization system would produce "unprecedented upheaval in public education," the chief justice expressed concern over the possible disruption a requirement for metropolitan desegregation would cause.

What would happen to local school boards? he asked. How would taxes, finances, bonds, school curricula and attendance zones be handled? The federal district judge, he added, would "become first a *de facto* 'legislative authority' to resolve these complex questions, and then the 'school superintendent' for the entire area. This is a task," Burger continued, "which few, if any, judges are qualified to perform and one which would deprive the people of control of schools through their elected representatives."

Despite frequent references in the news media to "the Detroit busing case," the majority opinion mentioned the busing issue only in passing. The reason was that the degree of busing was not central to the case, since only a tentative busing plan had been devised. The court did not have to pass on the proposed busing remedy when it decided at the outset that there was no constitutional need for desegregation beyond the city line.

As a standard of proof needed to justify metropolitan desegregation, the Burger opinion said 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 interdistrict segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts cause racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race."

The busing of black students in the 1950s from the small Carver suburban district in Detroit, rather than to suburban high schools, was such a violation. But, the chief justice added, "since the nature of the violation determines the scope of the remedy, this isolated instance affecting 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."

In a separate concurring opinion, Justice Stewart gave a further indication of what evidence could be used to make a case for interdistrict desegregation. Besides direct state action establishing school boundaries for discriminatory purposes, he pointed to "purposeful racially discriminatory use of state housing or zoning laws." The majority opinion noted that the lower courts had not relied on evidence regarding the effect of discriminatory housing laws on the racial composition of school districts.

In the words of one civil-rights lawyer, the concept of metropolitan desegregation, given the court's burden-of-proof requirement, "is still alive, but both its feet are tied." Nevertheless, the NAACP says it will continue pressing such suits, trying to come up with the type of proof the Supreme Court said was essential. At this stage, only a suit involving Wilmington, Del., appears to still have a chance of survival. In that case—one of the original school districts in the 1954 Brown decision—a state law was passed forbidding consolidation after a court

had ruled that interdistrict busing was the only way to desegregate the city school system, which was 80 per cent black.

Justice Marshall, who 20 years before had served as the NAACP's chief lawyer in the Brown case, ended his dissent with these words:

"Today's holding, I fear, is more a reflection of a perceived public mood that we have gone far enough in enforcing the Constitution's guarantee of equal justice than it is the product of neutral principles of law. In the short run, it may seem to be the easier course to allow our great metropolitan areas to be divided up each into two cities—one white, the other black—but it is a course, I predict, our people will ultimately reject."