

BRADLEY V. MILLIKEN: THE FAILURE OF IDEALISM

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INTRODUCTION

Summary

The Detroit metropolitan area earned a dubious distinction following the 2000 census. Wrestling the title from Gary, Indiana, Detroit was dubbed “America’s Most Segregated City.” In fact, despite having a metropolitan community that was 69.7 percent white and 22.9 percent black, two out of every three communities in metropolitan Detroit were more than 90 percent white. All of these majority white communities existed outside the city, whereas the city of Detroit itself was 81 percent black.¹

Analyses of the reasons for Detroit’s segregation abound. Most studies begin by analyzing the “Great Migration” of blacks from the southern United States to the North in the era surrounding World War II. Dubbed the “Arsenal of Democracy” during this time for its unrivaled industrial might, Detroit was the destination for a great number of these blacks. And, as occurred in so many majority-white, northern industrial cities, the white population of Detroit proved unwilling to live with the growing number of blacks who were “invading” their city.

While this complex racial history provides important context and will be the focus of the historical background section of this introduction, it is not the crux of this thesis. By 1969, the “Great Migration” of blacks to Detroit had dried up, and “white flight” to the suburbs had begun. Looking at census numbers from the time, those whites fleeing the city were largely families with school-age children. In fact, black children as a percentage of the total student population had increased from 45.8 percent to 63.8 percent in the years from 1960 to 1970 alone. While black children constituted 63.8 percent of Detroit’s student

¹ Joel Kurth et. al, “Region is diverse, not mixed” *Detroit News*, April 1, 2001, final edition. via Internet, <http://www.detnews.com/2001/census/0105/07/a01-206749.htm> (accessed March 1, 2009).

population in 1970, blacks as a whole were only 43.9 percent of the total population of Detroit.² Clearly, Detroit was fast becoming a city of old whites and young blacks.

My thesis, therefore, argues that the era from 1969-1974 was a tipping point in the history of segregation in Detroit. More specifically, I argue that *Bradley v. Milliken*,³ Detroit's landmark school desegregation busing case that began in 1970 and concluded in 1974,⁴ was the final failure for those who believed that Detroit could truly be an integrated city. While the case only involved the schools, numbers such as those above, as well as the attitudes of people present at the time, illustrate that its effects extended far beyond the classroom. Following this decision, pragmatism reined, and the goal of those involved shifted from the noble ideal of an integrated society to instead making the best of what they knew was an impossible situation.

Detroit is also an interesting study because its busing battle combines many elements of what had increasingly become a national debate. Throughout this thesis, I try to connect events occurring in Detroit with the national discussion. In chapter one, the debate in Detroit between integrationists and those blacks who had become disillusioned with integration mirrored a national argument. In chapter two, the case before Judge Roth is used as a classic example of the attempts by the National Association for the Advancement of Colored People (NAACP) to move desegregation litigation from the southern United States to the north.

² *Bradley v. Milliken*, 338 F.Supp. 582 (E.D. Mich 1971). Westlaw, <http://www.westlaw.com>. 586.

³ Throughout this thesis, I will refer to the case as *Bradley v. Milliken*. This was the case's title in both the District Court and the Sixth Circuit Court of Appeals. When it became a Supreme Court case, the title was changed to *Milliken v. Bradley*. This is because Governor Milliken and the state defendants were the party who petitioned the Supreme Court to review the case, and the petitioner's name in the Supreme Court is always first, followed by the respondent's.

⁴ The initial phase of the case, which is what this thesis is concerned with, concluded with the Supreme Court decision in 1974. There was still litigation for a significant time thereafter concerning how much money the state owed the city to help with desegregation, and exactly what the Detroit desegregation plan would be.

And, in chapter three, the Supreme Court's decision against metropolitan busing epitomized the national move away from desegregation.

Arguing that any event is a "tipping point" in history is always fraught with difficulty. My methodology proceeds from the perspective of those who were present when the events took place. What is incredible, when looking at the history of *Bradley v. Milliken*, is that so many people at the time either realized they were living at a historical crossroads, or came to that realization as the trial progressed. For those who fought the battle for integration in *Bradley*, this moment was their final chance to undo segregation before it became too entrenched, or was allowed to progress to such a point that it could not be undone. For those on the other side of this battle, this crossroads in history either did not exist, was not their duty to undo, or they had simply become so jaded that they believed this battle was doomed to fail.

In chapter one, the characters in this drama are State Senator Coleman Young, Detroit School Board President A.L. Zwerdling, and Zwerdling's liberal allies on the school board. I argue that Senator Young, who began his career as a committed integrationist, had been stung repeatedly by white people's refusal to accept blacks or to allow them to assimilate into society. Young, therefore, had shifted his view of integration from one of trying to assimilate into white society to one closer to the "Black Power" notions of Stokely Carmichael, where integration involved black Americans seizing positions of power for themselves and not waiting for whites to accept them. To this end, Young introduced a plan to decentralize Detroit's public high schools in 1969. This was a plan that accepted school segregation as an inescapable reality, and sought therefore to give blacks control of black schools and whites control of white schools.

In contrast, Zwerdling was an idealist, but the time for his ideals was coming to its end. Having been elected in 1965 to one of the most liberal school boards in the city's history, Zwerdling and his fellow liberals had been unable to effect any change in the Detroit school system. Zwerdling saw Young's decentralization plan, initially, as the final step in the segregation of Detroit's schools; once whites gained control of white schools and blacks control of black schools, neither would be willing to give it up, even for the sake of integration. When Young's plan granted Zwerdling the power to redraw districts, however, he saw an opportunity to affect change and give Detroit desegregation. Zwerdling never believed desegregation inside the city alone would work, but it was the best he could do under the circumstances.

In chapter two, the major character is Judge Stephen Roth. Judge Roth, a Hungarian immigrant, began the case unwilling or unable to see the problem from a black perspective. His own working-class background had made him believe people could do whatever they set their minds to, and that blacks lived together as a matter of convenience and protection rather than because they were forced to do so. As evidence mounted in the case before him, Judge Roth became acutely aware of Detroit's extreme segregation. He saw that, if he did not do something now, the city was quickly going to become a black core surrounded by a ring of white suburbs. Judge Roth believed that this segregation was both wrong and unconstitutional. Unlike Zwerdling, however, Judge Roth felt that the State of Michigan's complicity in segregation that he encountered gave him both the authority and the duty to involve the suburban schools in a desegregation plan for Detroit, and he therefore ordered such a multi-district plan.

Chapter three focuses on the Judges of the Sixth Circuit and the Justices of the Supreme Court who reviewed Judge Roth's rulings. In the Sixth Circuit, the focus is specifically on Judge Peck. Judge Peck, having struck down a desegregation plan in a case in Cincinnati that was not unlike what he was presented with in Detroit, saw the error in his previous decision and approved Judge Roth's metropolitan remedy. In the Supreme Court, in contrast, the majority of the Justices failed to consider the evidence that had been presented to Judge Roth and made a decision that appeared to be political in nature. Four Justices in dissent, however, saw the same problem that had confronted Zwerdling, Roth, and the Sixth Circuit. In their dissents, they admonished their fellow justices for having failed to fully consider what their opinion meant, and, in particular Thurgood Marshall's ominous words were regrettably prophetic.

The third chapter ends with the result of this decision. In the final analysis, Detroit adopted a desegregation plan that only served to hasten white flight, the attorneys who had fought for integration turned their efforts to other desegregation battles, and each of the characters went their own ways. For some, the case hastened their deaths, while for others it validated what they had always believed. The tipping point in history had passed, and those left in its wake had to do the best with what was left.

Secondary Literature

There is a great deal of secondary literature concerning Detroit before, during, and after *Bradley v. Milliken*. The first group of sources are those primarily related to the case. While I have been unable to locate any books solely dedicated to *Bradley v. Milliken*, I have located numerous scholarly articles concerning the case. The most relevant of these come from *The Court Legacy*, which is a newsletter published by The Historical Society for the

United States District Court for the Eastern District of Michigan, the District Court in which Judge Roth sat. In 2008, *The Court Legacy* began a series of articles dedicated to examining *Bradley v. Milliken*. These articles lay out the judicial history of the case, and examine some of the rulings in it closely. Their goal is not, however, to pursue the case's social implications as I attempt to do or connect it to national feeling. In addition, they do not attempt to examine the motivations of the various characters.

Another article which deals only with *Bradley v. Milliken* is Joseph Radelet's "Stillness at Detroit's Racial Divide: A Perspective on Detroit's School Desegregation Court Order—1970-1989", from *The Urban Review*, Volume 23, Number 3. It primarily focuses on what occurred after *Bradley v. Milliken* and efforts to reconcile the races in Detroit. It does, however, provide an analysis on the issue of community control compared to integration much like the one in this thesis's first chapter.

The next groups of sources to consider is those that deal with Detroit and, in doing so, mention *Bradley v. Milliken*. *Detroit: Race and Uneven Development*, by Joe Darden et al., deals with *Bradley v. Milliken* very briefly. It uses the case as an example of how school desegregation had become an increasingly political issue in Detroit, and how the case divided the community. Another book that treats school desegregation as a political issue is Jeffrey Mirel's *The Rise and Fall of an Urban School System*, which is an examination of the Detroit school system from 1907-1981. Mirel's book deals with *Bradley v. Milliken* principally as it affected the children. His conclusion is that this was a political conflict where no one was really concerned with the welfare of the children.

The final group of sources to consider is those that deal with national issues and must mention *Bradley v. Milliken*. *The Burger Court*, a collection of essays edited by Bernard

Schwartz, deals with *Bradley v. Milliken* briefly in an essay by Derrick Bell entitled “The Burger Court’s Place on the Bell Curve of Racial Jurisprudence.” Bell argues, as I do, that the Supreme Court justice’s opinions were likely influenced by the political nature of the times. Thomas Keck’s The Most Activist Supreme Court in History, in contrast, assigns no political motives to the judge’s decisions and instead paints their opinions as products of the judge’s anti-judicial activism leanings. The Irony of Desegregation Law 1955-1995: Essays and Documents by Mark Whitman primarily deals with what the opinions for *Bradley v. Milliken* meant in terms of other desegregation legislation considered before the court, and the precedent that these opinions set. Gary Orfield’s Must We Bus? deals with the case in much the same vein as Whitman’s book. Both primarily focus on Justice Stewart’s opinion, and how it could lead to future legislation. And, finally, James T. Patterson’s Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy deals with the effects of the case, and the responses to it from all sides. His conclusion considers whether a metropolitan plan could have actually succeeded.

I view my thesis as fundamentally different from most of these sources. While I make arguments that are supported by some of them and disputed by others, my angle on the case is one that has not really been pursued in depth. While none of these sources would dispute the importance of *Bradley v. Milliken*, looking at the case as a social tipping point in the history of Detroit is a theory that has not been sufficiently pursued. In addition, I feel that the in-depth analysis of characters, looking not only at the decisions they made but also why and how they made them, is a line of study that has yet to be fully compiled in the manner I attempt in this thesis.

Historical Background

Before examining Detroit during the time of *Bradley v. Milliken*, a significant amount of historical background is required. This background concerns both the demographic changes and resulting housing segregation in Detroit, as well as the civil rights backdrop (both nationally and locally) to these housing changes. While background information in other areas may be required, there will be more pertinent times to provide it as this thesis progresses.

Demographic Changes and Housing Segregation

Any true study of Detroit's race relations must begin with World War II. While there is significant literature to show that race relations were an issue in Detroit before this point, such as Kevin Boyle's *Arc of Justice* (the true story of a black Detroit family who encountered significant resistance when they attempt to move into a white neighborhood in 1925), blacks were such a small part of the population that they were easily contained within the ghettos and therefore integration never emerged as a significant issue. In 1920, Detroit's total population was 993,675 and its black population was 40,838, meaning that blacks made up only 4.1 percent of the population.⁵

In the buildup to and throughout World War II, however, these demographics underwent a profound shift. Between 1930 and 1950, Detroit's total population expanded from 1,568,662 to 1,859,568. In this same period, its black population expanded from 120,066 to 300,506. This meant that this 20-year time frame saw blacks go from 7.7 percent of the population to 16.2 percent of the population.⁶

⁵ U.S. Department of Commerce, Bureau of the Census, *United States Census of Population*, 1920 (Washington, D.C.: U.S. Government Printing Office, various years).

⁶ U.S. Department of Commerce, Bureau of the Census, *United States Census of Population*, 1930-1950 (Washington, D.C.: U.S. Government Printing Office, various years).

This sudden influx of blacks, due mostly to the great quantity of industrial jobs available in Detroit during World War II, created a tremendous housing shortage in the city of Detroit that was only exacerbated by the troops returning home after the war. The city's initial response to this shortage was to attempt to build "government-subsidized developments...throughout the city."⁷ In theory, the movement of people to public housing would help "eliminate the city's overcrowded, dangerous slums."⁸

While public housing for the city's influx of workers was both a noble goal and a rational solution, the city's racist method of carrying out this plan meant that public housing was disproportionately more available to whites than to blacks.

"From January 1947 through July 1952, 37,382 black families and 56,758 white families applied for public housing. 41 percent of white applicants and only 24 percent of black applicants made it onto the waiting list. Whites also moved off the waiting list more quickly than their black counterparts. The result was a striking discrepancy in the fortunes of black and white applicants: 9,908 whites, but only 1,226 blacks obtained public housing in the city."⁹

Part of the reason whites moved off the waiting list at a faster rate than blacks was the lack of housing available for blacks. The Detroit Housing Commission (DHC), the primary public-housing coordinator in metropolitan Detroit, had a strict policy of not building mixed-race housing. The DHC's one attempt to place a black housing project in a majority white neighborhood, the Sojourner Truth project in Northeast Detroit in 1942, led to a riot in which "40 people were injured, 220 were arrested, and 109 were held for trial."¹⁰ Following this incident, the DHC added to its mandate the promise that public housing projects would "not

⁷ Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit*, (Princeton, NJ: Princeton University Press, 2005), 59.

⁸ *Ibid.*, 59.

⁹ *Ibid.*, 58.

¹⁰ *Ibid.*, 74.

change the racial pattern of a neighborhood.”¹¹ This policy made it very hard to find a place for black housing projects, because most of the majority black neighborhoods in Detroit were already overcrowded ghettos. Furthermore, the fact that the DHC had yielded to white violence so easily in 1942 suggested to many white groups that the threat of violence would be enough to halt the building of any all-black housing project they opposed.

This untenable position led the DHC to finally formulate and unveil a master plan for public housing in 1949. This plan proposed building black public housing in 12 sites, eight on the outskirts of the city in predominantly white areas. These lots were “by no means Detroit’s choicest real estate. All fronted major thoroughfares, two were bounded by railroad tracks, and three sat in largely industrial areas, on sites zoned for manufacturing.”¹² What it appears the commission was hoping for was that the location on marginal land on the city’s outskirts would mean there would be less resistance from white community groups. They were mistaken, however, and white officials from all over the city reacted to these proposals with great alarm.¹³

This simmering racial tension over public housing finally came to a head in the mayoral election of 1949. George Edwards, “a UAW activist, former public housing administrator, and New Deal Democrat” who supported more public housing faced Albert Cobo, “a corporate executive, real estate developer, and Republican” who opposed the expansion of public housing.¹⁴ Edwards was resoundingly defeated, a shocking result for a union-backed candidate in a heavily unionized city. One UAW official, in trying to analyze

¹¹ Ibid., 75.

¹² Ibid., 81.

¹³ Ibid.

¹⁴ Ibid., 82.

the results, succinctly stated, “George was beaten by the housing program’.”¹⁵ The autoworkers’ fear of having a mayor who supported integration with blacks triumphed over the workers’ loyalty to their union.

The election of Cobo ended the push for public housing in Detroit. Cobo vetoed all but one of the public housing projects that were supposed to be in majority white areas. He refused to consider areas outside of the Detroit ghetto, and eventually the DHC had to content itself with rebuilding and expanding housing within the ghetto rather than considering any outlying sites. Cobo’s era continued until 1960, by which time public housing had only helped to increase the segregation of Detroit.¹⁶

Public housing was not the only cause of Detroit’s segregation. For blacks who had the means to move out of the overcrowded ghettos, the private housing market proved no more receptive. While the Supreme Court ruled that the enforcement of racially restrictive housing covenants was unconstitutional in 1948, this just made the private housing market become slightly more discreet about segregation. Between 1954 and 1956, Detroit’s Commission on Community Relations, which had been formed to help deal with the racial problems plaguing the city, reported “an increase of housing ‘incidents’ where whites were determined to stop blacks from moving into their neighborhoods.”¹⁷ This resistance was particularly fierce in the northwest section of the city, which by 1956 contained 50 neighborhood improvement associations, who “blocked sales of houses to blacks, organized

¹⁵ Ibid., 84.

¹⁶ Ibid., 86.

¹⁷ Joe T. Darden et al., *Detroit: Race and Uneven Development* (Philadelphia: Temple University Press, 1987), 127

demonstrations in front of black homes, persuaded white brokers not to sell to blacks, and protested against public housing projects.”¹⁸

The rising number of blacks, however, meant that they could not be contained in the ghettos forever. As the 1950s and 1960s progressed, a pattern began to emerge in Detroit. Middle-class white neighborhoods within the city would open to black families, become bi-racial communities for a limited time, and then progress rapidly to just become extensions of the black ghetto. The whites within these neighborhoods would simply migrate to the suburbs.¹⁹ Census numbers reflect this trend, as the city population of Detroit constituted 61 percent of the total population of the metropolitan area in 1950, but only 36 percent of the total population of the metropolitan area in 1970. In this time period, blacks increased as a proportion of the city of Detroit’s population from 16.2 percent to 43.9 percent. Therefore, it appears clear that the people who were leaving the confines of the city of Detroit were, by a healthy majority, white.²⁰

National and Local Civil Rights Backdrop

While Detroit was undergoing these profound demographic changes, other events nationally and locally were changing the outlook for many blacks. Following the United States entry into World War II, many prominent blacks and prominent black newspapers launched a “Double V for Victory” campaign. The “Double V” was meant to symbolize a need for victory over fascism abroad and racism on the home front.²¹

¹⁸ Ibid.

¹⁹ Ibid., 131.

²⁰ Bradley v. Milliken, 586.

²¹ Beth Bates, “‘Double V for Victory’ Mobilizes Black Detroit, 1941-1946” in *Freedom North: Black Freedom Struggles Outside the South, 1940-1980*, ed. Jeanne Theoharis and Komozi Woodard (New York: Palgrave Macmillan, 2003), 17.

As the 1950s and 1960s progressed, the changes awakened in blacks by efforts such as the Double V Campaign were felt. Blacks around the nation began to participate in nonviolent protests demanding an end to segregation. In 1955, these protests were centered in Montgomery, Alabama, over the unfair practice of forcing blacks to sit in the back of public buses. Over a period of months, blacks, led by Dr. Martin Luther King Jr., boycotted the public bus system until eventually the Supreme Court ruled that Montgomery's racist policies on public buses were unconstitutional.²²

The Montgomery bus boycott elevated Dr. King and his organization, the Southern Christian Leadership Conference (SCLC), to national prominence. Dr. King became a symbol of the civil rights movement, and his doctrine of nonviolent protest became the mantra of the civil rights movement. In 1960, sit-ins at Woolworth's in Greensboro, North Carolina, where a group of black students sat at a whites-only lunch counter and refused to leave until they were served, sparked a national movement of civil protest. People marched to protest segregationist policies in places such as Birmingham, Alabama, and St. Augustine, Florida. In 1963, Dr. King's SCLC teamed up with other civil rights organizations to organize a "March on Washington For Jobs and Freedom." This march was widely credited with leading to the passage of the Civil Rights Act of 1964, an act that outlawed segregation in schools, public places, and employment.²³

Even as the civil rights movement was achieving success, however, factions were developing within it. These factions are most clearly seen in the Student Nonviolent Coordinating Committee (SNCC), a civil rights organization that had sprung up following the 1960 sit-ins and had been one of the organizations that had helped Dr. King organize the

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²³ Mark Lytle, *America's Uncivil Wars: The Sixties Era from Elvis to the Fall of Richard Nixon* (New York: Oxford University Press, 2006), 120-137.

March on Washington. Following the passage of the Civil Rights Act, SNCC organized thousands of students to go to Mississippi in the summer of 1964 to register voters; while the Act contained many provisions, it said nothing about voting rights and therefore the many devices Southern states had in place to deny blacks the right to vote remained unchanged. SNCC volunteers faced violent protests in Mississippi, and found the Democratic party essentially closed to blacks. Unable to vote in primaries and field candidates in an essentially one-party state, even those blacks who managed to register to vote were effectively disenfranchised. Undeterred, the organization created a separate party, the Mississippi Freedom Democratic Party (MFDP), and determined to have the MFDP delegates challenge the regular delegation from Mississippi at the Democrats' national convention in 1964 in Atlantic City, New Jersey. While their protest at the convention attracted significant coverage to their cause, the Democratic party ultimately refused to seat the MFDP delegates because the Democrats wanted to maintain the appearance of a unified convention, and the seating of the delegation would have alienated significant portions of the delegates from the South.²⁴

The experience at Atlantic City showed many SNCC activists that they “could not rely on their ‘so-called allies’.”²⁵ One of the young SNCC activists who felt this sense of betrayal most acutely was Stokely Carmichael. Carmichael rose to become the leader of SNCC in 1966, and began preaching the mantra of “Black Power.” Black Power called for black Americans to seize control of their lives from a “white society that ha[d] no intention of giving up willingly or easily its position of authority.”²⁶ Carmichael best articulated these ideas in 1967 when, along with Charles Hamilton, he authored the book Black Power: The

²⁴ Ibid., 152-162.

²⁵ Ibid., 162.

²⁶ Stokely Carmichael and Charles V. Hamilton, *Black Power: The Politics of Liberation in America* (New York: Vintage Books, 1967), vii.

Politics of Liberation in America. While Black Power was not explicitly a repudiation of nonviolence, “Carmichael and other Black Nationalists often linked the slogan to the prospect of blood flowing in the street and revolution against the white power structure.”²⁷

What Black Power certainly was, however, was a message that the period of gradualism had passed; blacks needed to seize control for themselves, whether or not whites were ready for it.

The ideas of Black Power and black nationalism attracted a significant following in Detroit. As Angela Dillard notes in Faith in the City, many national observers in the 1960s held up Detroit as a model of racial integration. High rates of black home ownership, high black employment numbers, and the presence of blacks on the city’s Common Council masked the significant inequities still encountered by blacks. A group of young blacks growing up at this time felt that these improvements were not enough, and began to look for more radical voices than the liberal-labor coalition that had led the left for so long. While their national model was Stokely Carmichael, the local voice urging black nationalism and Black Power was Reverend Albert Cleage of the Central Congregation Church. By the mid-1960s, Cleage’s “denunciation[s] of the philosophy and strategy of nonviolence [were] grow[ing] louder every year.”²⁸ Cleage sought to unite Black Power with the black Church, believing that the Black church would eventually “serve as the cornerstone of the new Black nation that would emerge.”²⁹

As this more radical black faction within Detroit began to rise, racial tensions within the city increased. These were due both to the dearth of jobs available for blacks, the

²⁷ Lytle, 228.

²⁸ Angela Dillard, *Faith in the City: Preaching Radical Social Change in Detroit* (Ann Arbor: University of Michigan Press, 2007), 235.

²⁹ *Ibid.*, 237.

increasing crowding of the ghettos, and what the black community perceived as an increase in police brutality. When the police raided on a “blind pig” (or establishment that sold alcohol illegally) on July 23, 1967 at the corner of 12th Street and Clairmount (in the heart of a black ghetto), these tensions exploded into a riot that lasted 5 days. While this raid was technically the beginning of the riot, authors such as Leonard Gordon in *A City in Racial Crisis* and James Lincoln in *The Anatomy of a Riot* attribute it to feelings that had built up in the black community over a series of months, if not years. When the riot ended, 33 people were dead, 347 injured, and 3,800 arrested. In addition, well over 1,000 buildings had been burned to the ground, 2,700 businesses had been ransacked, and the total damage had soared to \$50 million.³⁰

This riot severely crippled the efforts of integrationists remaining in Detroit, and left a city simmering in racial tension. It was in these circumstances that the events that would transform into *Bradley v. Milliken* began.

³⁰ Darden et al., 72-76.

CHAPTER ONE: Zwerdling's Last Stand

Introduction

"No one who came to our public meetings on decentralization was interested in integration. Everyone wanted segregation so they would be assured a little piece of control; you cannot have both integration and community control"
-A.L Zwerdling, Detroit School Board president (1964-1969)

Detroit in the late 1960s was no place for a committed integrationist. The 1967 riots had destroyed the spirit of progress for many, and these feelings were only exacerbated by the 1968 murder of Dr. Martin Luther King Jr. Many prominent blacks, both in Detroit and nationally, had become disenchanted with the idea of gradual, non-violent integration that Dr. King had espoused. In Detroit, this ideological move away from integration found its voice primarily in Reverend Albert Cleage. Reverend Cleage sought to tie the Black church to this emerging Black nationalism, confident that the church must be the leader of the Black nation that was to emerge.¹

Coleman Young was one of the black men who had become disenchanted with the idea of gradual integration. His personal experiences will be described in greater detail as this chapter progresses, but it will suffice for now to say that he had seen the failures and limitations of integration, and that he believed the black community must take matters into their own hands. In this spirit, he proposed, as a State Senator, an act designed to give blacks in Detroit more control over their schools. His act passed and was signed into law by the governor, but that was truly just the beginning of the story.

Young's act authorized A.L Zwerdling and Detroit's liberal school board to redraw Detroit's school regions. Filled with committed integrationists, this board took the opportunity presented them and chose to disregard Young's intention and instead set out to

¹ Angela Dillard, *Faith in the City: Preaching Radical Social Change in Detroit* (Ann Arbor: University of Michigan Press, 2007), 237.

devise a plan to achieve school desegregation in Detroit, using their ability to redraw the lines as a way to reach that goal. Their actions created a firestorm within the Detroit community. When the State Senate tried to stop the actions of the school board, the NAACP filed suit, and *Bradley v. Milliken* was born.

In this chapter, I will seek to illustrate the problem that confronted A.L Zwerdling and his liberal allies on the school board, and how in dealing with this problem they acknowledged their realization that they were at a historical crossroads. Zwerdling had been elected to the school board in 1965 along with Rev. Darneau Stewart, a black minister, and Peter Grylls, an executive at Michigan Bell. These men, along with Dr. Remus Robinson (who was already serving on the board when they were elected), combined to form a liberal, integrationist majority on the seven-member board.² Despite the promise that their election had held, these men had failed in their efforts to affect any change in Detroit schools and, by 1969, were confronted with a school system wrought with racial tension and chronically underfunded. Into this equation came the legislation of State Senator Coleman Young, which appeared as though it would destroy the board's dreams of an integrated school system forever. Zwerdling and his partners on the board opposed this legislation, but finally had to give in when they realized its passage was a given. Once the legislation was passed, however, Zwerdling realized that the board's authority to redraw the school districts gave the board an opportunity to desegregate Detroit's schools, at least as much as was possible within the city limits. Despite significant opposition from both whites opposed to desegregation as well as blacks committed to community control, Zwerdling and the liberal members of board nonetheless persevered in their efforts, ultimately resulting in their recall.

² Jeffrey Mirel, *The Rise and Fall of an Urban School System: Detroit 1907-81* (Ann Arbor: University of Michigan Press, 1993), 298.

While the goal of examining the opinions of Zwerdling and his fellow board members is to illustrate that they saw this decision as a historical crossroads, the presentation of the opinions expressed at the school board meeting to vote on the desegregation plans is to show that the board members were not the only ones who grasped this decision's larger importance. All sides of the desegregation debate saw the importance of the decision. For integrationists, it signaled hope that Detroit's segregation could be undone and symbolized the continuation of *Brown v. Board of Education* into the north. For black community control advocates, it was a chance for blacks to begin seizing power in Detroit. And, for the majority of whites, it signaled the fearful proposition that their children would be bused to majority black schools.

The final goal of this chapter is to present Zwerdling in comparison to Coleman Young, and to illustrate how their differences mirrored a national debate. Positioning Young and Zwerdling, and their respective goals of integration and community control, as dichotomies of each other simplifies the distinction too much. Rather, I will try to show how, as Dillard puts it in *Faith in the City*, integration and community control "coexisted on a single ideological continuum as different inflections of the struggle for social justice."³ Young and Zwerdling were both committed to equality for blacks, but their individual experiences had given them very different ideas of the best way for this equality to be achieved.

Coleman Young and Public Act 244

In order to understand his ideological beliefs, a brief biographical sketch of Coleman Young is required. Coleman Young was born in Tuscaloosa, Alabama in 1919 to William

³ Dillard, 23.

and Ida Reese Young.⁴ White neighbors constantly harassed his father, a World War I veteran, because he dared to sell and distribute African-American newspapers such as the *Pittsburgh Courier* and the *Chicago Defender* to other local African-Americans. This harassment eventually led the elder Coleman Young, in 1921, to move his family to Huntsville, Alabama to live with his brother. Finally, after two years in Huntsville, the Youngs packed up again and moved to Detroit, the city where the younger Coleman Young would live until his death in 1997.⁵

Coleman Young graduated from Eastern High School in 1936 and went to work in the Ford factories. He became aware of the efforts by Ford and other automakers to use the threat of black workers as strikebreakers to stop whites from striking or unionizing. Young therefore theorized that getting blacks and whites to unionize together would best serve the interests of all parties involved. He was known as a pro-Union worker, and his political rhetoric and efforts to fight for a union eventually got him fired. Undaunted, Young became the secretary of the Detroit chapter of the National Negro Congress (NNC) and from that post continued to work with the United Auto Workers (UAW) in their effort to unionize Ford. Finally, in 1941, the combined efforts of black and white workers paid off and Henry Ford finally allowed unionization. This triumph, which only came through the combined efforts of white and black workers, gave Young his early stance as an integrationist.⁶

Over time, however, Young fought many battles that pitted white against black and made the bi-racial success of the Ford unionization seem like a distant memory. Young served in World War II as a bombardier and navigator in the 477th Medium-Bomber Group, a group commonly known as the Tuskegee Airmen. In 1945, Young's Squadron was

⁴ Wilbur Rich, *Coleman Young and Detroit Politics* (Detroit: Wayne State University Press, 1989), 42.

⁵ Coleman Young, *Hard Stuff* (New York: Penguin Books, 1994), 13-14.

⁶ *Ibid.*, 39-46.

transferred to Freeman Field, located outside of Seymour, Indiana, where some black officers had been refused service at the officers' club and left without incident. Young and his fellow soldiers determined that they would go to the officers club and either be served or arrested. They went in and, ultimately, 101 officers were arrested in what became known as the "Freeman Field Mutiny." The charges against Young and his fellow officers were ultimately dismissed, and he was soon discharged at the war's conclusion.⁷

Young returned to Detroit, and in subsequent years railed against discrimination within the Congress of Industrial Organizations (CIO). Young and other activists sought to get a black official added to the board of the Wayne County CIO, a move that eventually occurred but which faced bitter opposition from the organization's white membership. During this time, Young also emerged as a passionate supporter of Progressive Party candidate Henry Wallace in 1948, a decision that caused Young to be viewed for many years as a pariah within the Democratic Party and the union movement.⁸ Despite this outcast position, Young eventually worked his way back into the good graces of the party and in 1960 he was chosen as a delegate to help draft a new state constitution for Michigan. In 1964, he won election to the Michigan State Senate, an office he would hold for 10 years.⁹

Young's experience is typical of the story of many black civil rights advocates at this time. Having tried gradual integrationist methods, and seen their failure, many of these activists were searching for something more radical. While Young had begun his career as a committed integrationist, it appears clear that by the late 1960s the racial conflict Young had experienced, both within the army and within the unions that he had helped to gain a foothold in Detroit, made him realize that the only path to equality for blacks involved seizing power

⁷ Ibid., 67-78.

⁸ Ibid., 97-106

⁹ Rich, 83-126.

for themselves. To be fair, Young attempted to refute this claim in his 1994 autobiography Hard Stuff in which he sought to point out his efforts throughout his career to have blacks and whites work together for change. This claim, however, is problematic in light of Young's speeches around the late 1960s, as well as his major legislative efforts. In addition to school decentralization, Young's other prominent cause in the late 1960s and early 1970s was an effort to get more blacks in positions of power within the Detroit police. This method of achieving equality seems much closer to the ideas of Stokely Carmichael and Albert Cleage, where blacks seize power of the institutions of oppression and reform them, than to the ideas of gradual integration that Young's autobiography claims he was in favor of. Perhaps this contradiction can be explained by the timing of Young's autobiography. In 1994, Young had just retired from a 19-year term as mayor of Detroit. Throughout his term, Young was often accused of being a "race-baiter", inciting racial conflict to maintain his popularity, a charge he obviously was aware of and went to great lengths in his autobiography to refute. His efforts to refute this accusation may help to explain the discrepancy between his speeches and actions in the late 1960s, and his claims in his 1994 book.

Regardless of the speculation about Coleman Young's intentions, however, his actions in 1969 are unambiguous. Young and other concerned about the Detroit schools were faced in the late 1960s with a system that appeared to be failing its students, and to be in the midst of tremendous racial conflict. The pages of the *Michigan Chronicle*, a prominent African-American newspaper in Detroit, illustrate these tensions. In the spring of 1969, that newspaper was filled with stories about racial conflict at various schools. At Martin Luther King High, Mackenzie High, and Butzel Junior High, teacher protests, racial violence, and

student boycotts forced white principals out of predominately black schools in early 1969.¹⁰ At each of these schools, low test scores, lack of discipline, and lack of facilities were blamed on white administrators. The chorus of complaints became so loud that ultimately white principals were asked to leave, and black administrators were found to take their places. Coleman Young and his supporters saw the solution to these problems as decentralization and black control over black schools.

Coleman Young and his supporters were part of a broad national movement towards black control over black schools, or “community control” of schools as it was termed at the time. Oddly enough, the national movement for community control had originated in a call for integration. In 1967, after the New York board of education had failed to provide an integrated school, parents of children in Intermediate School 201 in Harlem had demanded that “parents and others in the community be given complete control over the school.”¹¹ Their stated reasons were that, if the board of education was not going to provide their children with equal education through an integrated school, than they would seize control of the school and provide their children with an equal education. Furthermore, many intellectuals, both at the time and more recently, attempted to make the argument that all-black schools controlled by blacks increased black youths’ self-esteem. The line of reasoning, as articulated in Joseph Radelet’s “Stillness at Detroit’s Racial Divide,” argued that schools of this nature were more likely to teach black history and emphasize black contributions to the United States. This would give black youth a sense of belonging and heritage, something that American society generally, and integrated schools specifically,

¹⁰ “Ghetto Pressure to Push 3rd White Principal Out,” *Michigan Chronicle*, February 8, 1969.

¹¹ William R. Grant, “The Evolution of School Desegregation in Detroit,” *Wayne State Law Review* 21 (1975): 854-855.

failed to provide for them.¹² Thus, community control, like Black Power, had risen as an alternate means of achieving equality due to the failures of integration.

Coleman Young presented his bill for Detroit school desegregation in the State Senate on April 14, 1969. This bill, Public Act 244, called for the school board of Detroit to divide its district into somewhere between 7 and 11 separate districts with each district containing between 25,000 and 50,000 students. These regions would then each elect their own school boards, and each district would elect one person to serve on a central school board. The regional school boards were given the authority to elect a superintendent for their district, hire and fire teachers and other employees of the district, and design the curriculum and budgets for their district.¹³

While Young himself desired full community control, his bill contained numerous provisions that appear to make community control less powerful. These included authorizing the central school board to review the employment decisions of the regional school boards and “overrule, modify, or affirm the action[s] of the regional district board[s],” as well stipulating that superintendents hired by the regional boards had to come from a “list of candidates submitted by the district board.”¹⁴ Other authors, such as Jeffrey Mirel in The Rise and Fall of an Urban School System: Detroit 1907-81, have argued that Young included these provisions because he knew that the Senate would not pass anything too “radical” and he cared more about the passage of a plan than getting full community control.¹⁵ This

¹² Joseph Radelet, “Stillness at Detroit’s Racial Divide: A Perspective on Detroit’s School Desegregation Court Order—1970-1989” *The Urban Review* 23, no. 3 (1991): 183, <http://www.springerlink.com/content/q5712674011062kk/> (accessed March 15, 2009)

¹³ Enrolled Senate Bill No. 635 in Detroit Public Schools Community Relations Division, Box 7, File 7, Archives of Labor and Urban Affairs, Wayne State University.

¹⁴ *Ibid.*

¹⁵ Mirel, 336.

argument appears to have significant merit given that Young's bill was the one that passed when other, more radical decentralization plans had failed.

Young's legislation ignited a heated debate within the Detroit school board between the integrationist members led by Zwerdling, leading black integrationists, blacks committed to community control, and whites committed to neighborhood schools. Both whites committed to neighborhood schools and blacks committed to community control desired that schools be in control of the communities surrounding them, which may lead some to the supposition that they were on the same side. There is a clear distinction, however, between these factions due to their motivations. Whites in favor of neighborhood schools had no difficulty with the status quo, but saw that through advocacy of decentralization they could ensure black control of black schools and white control of white schools; as long as whites did not lose control of white schools, they would be satisfied. Black community control advocates, in contrast, could not accept the current status quo because it put a white school board in control of a majority black school district. Like integrationists, blacks in favor of community control simply desired equal education for black children; they just believed the most realistic method of achieving this equality was through black control of black schools.

While both these groups were ultimately in favor of decentralization, both Zwerdling's forces and black integrationists were initially staunchly opposed to it. Zwerdling and the liberal members of the school board viewed decentralization, initially, as the final death of their efforts for integration. They saw a white group on one side grasping for control and a black group on the other doing the same. To them, integration was impossible once decentralization had become a reality, because both groups would finally have the control they desired and would be unwilling to relinquish it.

Ultimately, however, Zwerdling's forces bowed to the reality of decentralization, and the school board passed a resolution on May 13 and called for "developing a viable plan for transference of meaningful power to the community," essentially a statement in support of decentralization. With this support ensured, Young's bill passed in the Michigan House of Representatives by a vote of 83 to 18 and in the State Senate by a vote of 25 to 5. Governor William Milliken signed his legislation into law on August 11, 1969.¹⁶

Young's fight for decentralization seemed complete. All that was left was for the school board to draw up a decentralization plan. Young had left the authority for decentralization in the hand of A.L Zwerdling and his allies on the board who, despite their best efforts, had been largely unable to slow the deterioration and increasing segregation of Detroit's school system. Zwerdling and his allies, initially opponents of Young's legislation, came to see it as their final opportunity to integrate the Detroit schools. And it was an opportunity of which they intended to take full advantage.

A.L Zwerdling and the April 7, 1970 Plan

Before delving into the issues that confronted the school board as they debated decentralization, a brief biography of its president, A.L Zwerdling, would likely prove helpful. Zwerdling was a graduate of the University of Michigan Law School and a leading labor lawyer before becoming school board president. He was a key advisor to Walter P. Reuther, president of the United Auto Workers (UAW), and became a UAW attorney as well as the head of Americans for Democratic Action (ADA), a liberal political interest group. In addition to these other liberal leanings, Zwerdling was a lifetime member of the National Association for the Advancement of Colored People (NAACP).¹⁷

¹⁶ Ibid., 336-337.

¹⁷ Obituary of A.L. Zwerdling, *New York Times*, May 19, 1987, Metro Section, Final Edition.

Zwerdling's history illustrates a contrast with Coleman Young and the blacks in favor of community control. Unlike Young, Zwerdling, a white man, had never faced a fight against segregation that directly influenced him or met with the type of opposition that Young had faced in areas such as the army. Furthermore, Zwerdling's status as a leader within the UAW meant that he was likely a party to successes such as the one Young had experienced when black and white had joined forces to unionize Ford. Finally, and perhaps most importantly to a more thorough understanding of his position, was Zwerdling's membership in the NAACP. Among the prominent black organizations of the late 1960s, the NAACP stood as one of the most moderate, having never joined in the "Black Power" or black nationalism movements. Instead, the NAACP sought a path towards integration and equality with the help of white people, a dream that for many blacks that had been lost with the 1968 death of Martin Luther King, Jr., or even earlier for some. The NAACP therefore sought gradual steps towards integration, along the model of lawsuits and sit-ins, rather than the violent demands for equality that emanated from people such as Stokely Carmichael. This moderate approach made the NAACP of the 1960s the perfect domain for a white liberal such as Zwerdling, and the organization's influence can undoubtedly be seen in his actions and pronouncements throughout the decentralization debate.

Zwerdling's first major pronouncement following the bill came in a statement to administrators and supervisors of the Detroit public schools. This statement, issued on September 5, 1969, came less than one month following the signing of Public Act 244 into law by Governor Milliken. Zwerdling openly acknowledged that the board was going to try to promote integration through the use of its authority to redraw districts lines, stating that the boards would "draw the lines for these regions in such a manner as to maximize the

opportunity for an integrated experience for all public school children, both from the standpoint of color and socio-economic status.”¹⁸ Thus, less than a month after the passage of a bill he had opposed, Zwerdling saw the potential for change that his status as board president made possible. While it was not the broad integration he hoped for, Zwerdling realized that he could affect change as far as the city limits would allow. In what can only be described as foreshadowing, Zwerdling himself acknowledged in his statement how ineffective this desegregation would be without “crossing the boundaries into the suburbs.”¹⁹ His mandate did not give him that authority, however, and therefore Zwerdling made the best of what he was given and sought to desegregate the city as much as was possible.

Zwerdling and his supporters on the board understood, however, that integration might not find a receptive audience in Detroit. Therefore, in an effort to explain the issues before the board to the public, the board sent out informational kits to every neighborhood school of the school system in November 1969. These kits were meant to be distributed to concerned families and included a copy of Public Act 244, population data from the school census of 1968, a chart illustrating enrollment by racial ethnic-group of the senior high school districts from 1969, and a brief document detailing how the September 1969 enrollments were indications of population movement within the city.²⁰

In sending out these kits, the board’s goal was to show the population the same lack of integration that they saw, and thereby gain popular support for efforts aimed at desegregation. The “Racial-Ethnic Census” chart was the chief vehicle for showing these

¹⁸ Statement by A.L. Zwerdling to Administrators and Supervisors of the Detroit Public Schools in Detroit Public Schools Community Relations Division, Box 7, File 6, Archives of Labor and Urban Affairs, Wayne State University.

¹⁹ Ibid.

²⁰ Board of Education kit in Detroit Public Schools Community Relations Division, Box 7, File 6, Archives of Labor and Urban Affairs, Wayne State University.

profound racial discrepancies in high schools. There were 21 schools in the survey. 9 of these had a black to white ratio of greater than 3 to 1; 5 had a white to black ratio of greater than 3 to 1; and only 4 came even close to approximating the percentages seen in the city itself (which at the time was approximately 62 percent Black, 36 percent White, 0.5 percent Asian, and 1.5 percent Hispanic). If the idea was that every school should be approximately 50 percent black and 50 percent white, which is what Zwerdling seemed to be suggesting with his metropolitan plan (as this type of integration would be impossible by keeping a plan solely within the city's limits), then only Finney, Southwestern, and Western high schools could be considered truly "integrated". To the liberal members of the school board, numbers such as these made the problem of segregation in Detroit's schools starkly obvious.²¹

To both the blacks committed to community control and the whites committed to neighborhood schools, however, the racial makeup of Detroit's schools should have either had little bearing on the school board's decision, or no bearing whatsoever. The community control advocates rallied behind what became known as the "Black plan", a boundary proposal that would have given black voters control of six of the eight regions and control over the majority of the black students.²² Whites opposed to desegregation suggested that the administrative regions of the school district, which were informal and meant to decide where children would go to high school, should continue to exist and should simply be given their own regional boards to satisfy the decentralization order.²³

Zwerdling and the school board decided to hold public meetings around the Detroit area beginning March 16 to gauge public opinion about the decentralization plans before the board. They presented the public with seven different decentralization plans, and the

²¹ Ibid.

²² Mirel 338.

²³ Ibid., 339.

overwhelming response, from both black and white, was to oppose integration. At the board's first meeting, held March 16 at the Stevenson building, 100 people gathered but only 11 spoke. All the speakers, black and white, asked the board to "forget about integration" and give control of black schools to blacks and white schools to whites.²⁴ Undeterred by this opposition, the board asked superintendent Norman Drachler, using Plan 3 of the seven plans as a model, to draw up a proposal that would achieve both the goals of decentralization and desegregation, as much as was possible given the city's borders. Drachler's plan, in addition to redrawing boundaries, also changed the junior high schools that fed into some high schools. These plans, presented to the board in secret on March 31, were leaked by Patrick McDonald, a school board member opposed to integration, and published in the *Detroit Free Press* and *Detroit News* on Sunday, April 5, two days before the board was scheduled to meet and vote on adopting the changes. In leaking these plans, McDonald hoped to create a public outcry that would cause Zwerdling and his liberal allies to reconsider their position.²⁵

This plan broke the administrative regions that had always existed in Detroit into seven new regions, each containing two to three high schools and each to be governed by its own regional board. Initially, this plan, Plan 3, had only involved creating the regions and not changing of attendance zones for high schools. At the urging of Zwerdling and the board's more liberal members, the plan Drachler presented also involved changing the attendance zones of ten of the city's 22 high schools with the goal of achieving more integration. This plan involved sending students who would have attended Cooley (a predominantly black high school) to Redford (a predominantly white high school) and vice-versa; students who would have attended Cody (white) to Mackenzie (black) and vice-versa; students who would

²⁴ Harry Salsinger, "Schools' Rezoning Opposed", *Detroit News*, March 17, 1970.

²⁵ Mirel, 340.

have attended Pershing (black) to Osborn (white); and students who would have attended Denby (white) to Kettering (black) and vice versa. The final change was that students in Southwest Detroit, who had always had the option of attending Western or Southwestern High Schools (which were both fairly integrated), would go to Southwestern.²⁶ Under the plan, 3,000 students currently in junior high would be going to schools different from the ones they were supposed to in the fall; the high schools where students would potentially have been sent to different schools enrolled 33,600 students.²⁷

The attempt to spark a public furor by leaking the desegregation plans succeeded, and the forces against integration came to a head at the April 7 meeting where the board finally voted on their decentralization plan. The board meeting met in a room with space for 250 people to sit. At the outset of the meeting, Member McDonald informed the chairmen that there were an additional 1,000 people in attendance in the lobby who desired to have their voices heard (in truth, reports in the *Detroit Free Press* afterwards estimated the number at around 750). What followed was one of the most contentious meetings in Detroit school board history. Board meetings had always been open to the public, and there was a policy in place for this meeting that all who had informed the board beforehand of their desire to speak at the meeting, either for or against the integration plan, was given a forum to voice their opinion. This meeting, therefore, provides insight into the reasoning and opinions of many of the divergent attitudes over the busing issue.

Those who spoke longest for the integration plan were representatives from the Michigan Civil Rights Commission, the Detroit Branch of the NAACP and the Detroit Urban League. Interestingly, these were all national or statewide groups who, while they in some

²⁶ William Grant, "City to Shuffle School Areas In Broad Integration Plan", *Detroit Free Press*, April 5, 1970.

²⁷ William Grant, "Pupil Integration Plan OKd: Schools Get Race Balance", *Detroit Free Press*, April 8, 1970.

cases had local branches, also had larger concerns and considerations. The statements of the representatives of these groups reflect those larger concerns. Mrs. Frank Wiley, speaking for the Michigan Civil Rights Commission (MCRC), referenced the group's statement of April 23, 1966 that asserted that local school boards should "consider the factor of racial balance along with other educational considerations in making decisions about...reorganization of school attendance districts'."²⁸ Mrs. Wiley was pleased that the board was among the first to take action in accordance with this statement. Dr. Jesse Goodwin of the NAACP praised the board for the historical precedent it was setting, opining that "it is a major first for any large urban area in the north and is, perhaps, the first time that a large Board of Education has taken drastic steps without being under court order or threat of court."²⁹ And, finally, Francis Kornegay of the Detroit Urban League suggested that with this step the board would help finally fulfill "the United States Supreme Court mandate of May 17, 1954," tying this decentralization plan to *Brown v. Board of Education*.³⁰

What these statements show, more than anything, is that the national civil rights leaders saw the board's decision in broad terms. It was a fulfillment of court mandates, a first step for northern urban educators, and a furtherance of the struggle begun in 1954. Even when speaking about it in terms of Detroit, members of these groups saw it for its larger implications. Mrs. Wiley of the MCRC, for example, saw that this plan must occur because "a pattern of residential segregation exists in Detroit with the largest concentration of

²⁸ Detroit Board of Education, April 7, 1970 Regular Meeting Minutes, Personal Files of John Runyan, Detroit, MI, 514.

²⁹ *Ibid.*, 519.

³⁰ *Ibid.*, 522.

minority group students living within the city limits.”³¹ Thus, the statements of this group show that they grasped the larger implications of the decision.

The black proponents of community control also saw the importance of this decision in staunchly political terms. The major speaker for these interests at the board meeting was John Webster, who was sent as a representative of Rev. Albert Cleage, the Black Teacher’s Caucus, the Inner City Parent’s Council, the Action Council of the Shrine of the Black Madonna, and the Ad Hoc Committee for Community Control of Schools. These black organizations rejected any plan that did “not transfer meaningful power or self-determination to the black community.”³² Furthermore, they viewed integration as “an acceptance of the white man’s declaration of white superiority and black inferiority.”³³ For them, integration no longer meant equality because it implied a suggestion that blacks could not learn as well unless they learned with whites. Equality, then, could only be achieved when blacks controlled the education of their own children and therefore improved their children’s education themselves. Again, the difference between the integrationists and the community control advocates was principally over the best means to achieve equality.

Webster’s message, then, focused this debate in the staunchly political terms that were emerging, both locally and nationally. There was a group of black proponents of integration, supported by liberal whites, who saw this as an opportunity to make a statement about integration in the north and bring about equality of the races. Opposing them were a group of community control advocates who saw integration as a statement of the inherent inequality of blacks, and thought that equality could only be achieved if blacks were given the power to do it themselves. And, finally, there were the white opponents who simply

³¹ Ibid. 514.

³² Ibid., 523.

³³ Ibid.

wanted to maintain the status quo, either through decentralization that maintained segregation or through maintenance of the system (and the segregation) that currently existed.

White opponents of integration used somewhat different imagery. Jason Howe, representing the Redford community council (Redford being a high school that, according to the 1969 racial census, was approximately 96 percent white and 4 percent black³⁴) is indicative of this view. Mr. Howe's articulated reasons for opposing busing were due to fears that children "would have to leave home before it was light in the morning" due to long bus rides, and that extracurricular activities would be disrupted. Furthermore, Mr. Howe asserted that news of the desegregation plan had increased segregation within the school, so that where there was once a happy mix now there was a clear divide between black students and white students.³⁵

Whether this was the true motivation of Howe and those he represented can be questioned. But, regardless of their intentions, it was clear from Howe and other concerned parents like him that the issue of busing had struck a nerve within Detroit's white community. Fearful of their children being sent to majority black schools, many people put forth reasoning such as Howe's about how busing was impractical. In addition to this argument, many white opponents of busing also stressed the ideas of "community control" of schools and "community participation" in schools. Mr. John Whiteside, speaking as a member of the community of Denby high school (approximately 96 percent white and 4 percent black according to the 1969 Racial-Ethnic Census), stressed that his community felt that it was not "in the best interests of the majority of the children of the City of Detroit to

³⁴ Ibid., 514-515

³⁵ Ibid.

uproot them from their neighborhood schools and force them to attend schools outside their own community.”³⁶

While many of the complaints raised by white parents seem rational, the racism underlying them must at least be examined. One can never know the true motivation of these parents, but certain factors do point to the idea that maybe their concerns were not truly only about the interests of the children. The best example of this may be the fact that many white parents who voiced their opposition to busing said that they found “one-way busing”, where black children were bused to white schools for desegregation but not vice versa, acceptable.³⁷ Such sentiments seem hypocritical when these parents claimed to be so concerned about extracurricular activities or long waits for the bus. Furthermore, almost every author of note on the subject cites racism as at least part of the reason why whites were so vehemently opposed to busing.

Despite this opposition from numerous sides, the board proceeded with its meeting. Eventually, the decentralization plan passed by a 4 to 2 vote. Peter Grylls, President Zwerdling, Darneau Stewart, and Andrew Perdue voted for. James Hathaway and Patrick McDonald voted against. Remus Robinson, the other liberal board member mentioned earlier, was in the hospital terminally ill with cancer and thus not present to vote.³⁸

Public Act 48 and the Board Members’ Recall

Reaction to this decision was immediate and vicious. Over the next several school days, numerous majority white schools saw walkouts, students forming picket lines, or parents holding their children out of school in protest against the board’s decision. In some cases, these walkouts led to racial violence, as in the case of Osborn high school (69 percent

³⁶ Ibid., 516.

³⁷ “Roth Order Angers Suburbs,” *Detroit Free Press*, June 15, 1972.

³⁸ Mirel, 340.

white, 30 percent black). At Osborn, on Wednesday April 8, a group of black students attempted to join a number of white students who were picketing with other white students from Denby high school against the school board's ruling of the day before. These black students were opposed to the board's ruling too. According to the *Michigan Chronicle*, whites chased the blacks out of line and down Seven Mile Road, throwing bottles and rocks at them.³⁹ Student protests were reported at numerous other public schools, with special mention being given to Denby, where 300 to 500 white students walked out and sat blocking traffic in nearby Kelly Road.⁴⁰

Immediately following the board's decision, efforts to have it undone were begun. The Citizens Committee For A Better Education (CCBE), which had been formed on Monday April 6 at a meeting in Denby high school, claimed by Wednesday already to have 3,000 members and to have raised \$1,200 in efforts to protest the new plan. Chairmen Edward Zaleski remarked, "It will be a tough fight, but we are prepared to fight this thing all year, or ten years if necessary."⁴¹

While the reaction within white communities was vehemently anti-busing, the reaction within the black community was much more mixed. The *Michigan Chronicle* reported finding an almost 50-50 split among blacks polled about their support for the measure in the days directly following the school board's decision. The *Chronicle's* own pages in the weeks following the decision also bear out this contention. On the one hand, the *Chronicle* wrote an editorial on April 18, 1970 praising the school board. The editorial acknowledged that there were black groups opposed to the board's decision because they felt

³⁹ Nadine Brown, "Blacks Urge Action on Osborn Violence," *Michigan Chronicle*, April 18, 1970.

⁴⁰ Edward Shanahan and William Schmidt, "750 Whites Rap School Changes," *Detroit Free Press*, April 8, 1970.

⁴¹ *Ibid.*

it “would tend to lessen the power of blacks to control their own schools,” but said that those goals were too “limited” and that it was time for blacks to have “more to say about those things which happen outside the all-black neighborhood but which affect black people.” Thus, the *Chronicle* asked its readers to support the school board in its efforts.⁴²

Conversely, the very next issue of the *Chronicle* (dated April 25, 1970, as it was a weekly paper) contained a letter to the editor by Walker E. Smith, the head of the McMichael Concerned Parents Group (McMichael was a predominately black junior-high school). Mr. Smith represented the opinion of many blacks at the time, who supported improving the education of all of Detroit’s students and were resentful of the implication that “only in a white or racially mixed school is quality education possible.” Mr. Smith believed that the key for any school was community involvement, and that community involvement could “bring about the one thing in which we are all interested, and which we all want, and that is quality education.”⁴³

While this debate over the merits of the desegregation plan was raging in the black community, events were conspiring to render the debate temporarily irrelevant. As discussed earlier, the CCBE had pledged to fight against the desegregation plan, and they had backed up this plan with action. Immediately following the board’s decision, the CCBE had begun a petition drive. The goal of this drive was to have a vote to recall the four board members who voted for desegregation placed on the August 4 primary ballot. Collecting signatures from among the mostly white northwest and northeast sections of the city, this group had garnered 130,000 signatures on their petition, which charged the four board members with “ ‘violating their trust in office’ by passing a plan to ‘redefine school attendance areas, which was

⁴² “Detroit School Board Has Shown the Way,” *Michigan Chronicle*, April 18, 1970.

⁴³ “Decentralization Speech ‘Distorted,’ Smith Says”, *Michigan Chronicle*, April 25, 1970.

disruptive, contrary to the best interests of the community and caused unnecessary transportation costs to the students’.”⁴⁴ These signatures had been enough to get the issue placed on the August 4 ballot, where Detroit voters recalled the four members by a 60 percent to 40 percent margin.⁴⁵

By August, this recall was also a moot point, however, as the protests in Detroit had attracted the attention of the state legislature, which had passed the original act ordering decentralization. The state legislature had never wanted decentralization to become a vehicle for desegregation, and members were now being flooded with angry mail and calls from their constituents, who worried that the death of neighborhood schooling in Detroit may presage its death in other parts of Michigan and were mad at the Detroit school board for passing a desegregation plan that they felt the board had no right to pass. Due to these circumstances, the legislature quickly passed a bill repealing Public Act 244 altogether. Coleman Young was furious at the Detroit School Board for putting decentralization in jeopardy with their “chicken shit integration plan” and quickly went to work writing another decentralization plan.⁴⁶

The result of Young’s efforts was Public Act 48, which was ultimately signed into law by Governor Milliken on July 7, 1970. This act was meant to decentralize in much the same way that Public Act 244 had been, but it contained numerous new provisions. It created eight regions, each run by a five-member board. And, most importantly, section 12 of the bill expressly forbade the changing of any attendance zones for the 1970-71 school year that had already been decided by the school board, expressly disallowing the April 7 desegregation plan. Thus, Coleman Young got decentralization through the state legislature at the expense

⁴⁴ William Grant, “Here Are the Issues Behind Recall Vote”, *Detroit Free Press*, August 2, 1970.

⁴⁵ William Grant, “Recall Vote Ousts 4 from School Board”, *Detroit Free Press*, August 6, 1970.

⁴⁶ Mirel, 342.

of integration, and the recall vote in August was more a warning to future school board members to listen to constituents than an act with any concrete consequences.⁴⁷

The NAACP and the Coming of Bradley v. Milliken

The NAACP's entrance into this Detroit story requires some background. Following the landmark *Brown v. Board of Education* decision in 1954, the NAACP had proceeded to try school desegregation cases all over the south. In the south, almost every school system operated as a dual-system, meaning that at every level of schooling there was one school for blacks and another school for whites. This situation meant that presenting evidence to a judge of *de jure* (or "by law") segregation required simply looking at the school system. This is not to say that southern integration was by any means easy, but rather to point out that the proofs required in a southern school district case were relatively easy to come by.

In the north, in contrast, overt school segregation had been outlawed in most places since Reconstruction. Many school systems, nonetheless, remained segregated. Many people attributed this fact to *de facto* (or "by fact") segregation, which was generally believed to be due to social and economic conditions and residential patterns. While *Brown* had held that "separate facilities are inherently unequal," most took that to only pertain to facilities that were explicitly made separate. Hence, there was a large gray area in the North as to whether *Brown* meant the courts had a duty to undo school segregation caused by *de facto* factors.

Complicating this situation was the fact that, in reality, *de facto* factors were not the only forces at work in Northern school systems. Many northern school systems had gerrymandered district lines, built new schools in certain areas, and engaged in other acts to ensure that their systems remained segregated. All of these were clearly *de jure* acts that had

⁴⁷ Text of Act 48 in in Detroit Public Schools Community Relations Division, Box 7, File 32, Archives of Labor and Urban Affairs, Wayne State University.

illegally perpetuated segregation, but discovering their existence was hard. Furthermore, as the introduction laid out for Detroit, residential patterns in many northern cities were not arbitrary but were instead the result of policies designed to exclude blacks from certain areas. All of these factors caused northern school desegregation to be a great unknown that the NAACP legal team's had not invested significant time in.

By 1969, however, the NAACP had examples of how to try and win a northern school case. In 1961, the parents of schoolchildren in New Rochelle, New York won a court battle over the segregation at Lincoln Elementary School. After the parents showed conclusive evidence that the school board had gerrymandered the school district to ensure that Lincoln remained an all black school, the judge ordered desegregation to occur. He held that there was

“no basis to draw a distinction, legal or moral, between segregation established by the formality of a dual system of education, as in *Brown*, and that created by gerrymandering of school district lines... The result is the same in each case: the conduct of responsible school officials has operated to deny to Negro children the opportunities for a full and meaningful educational experience guaranteed to them by the Fourteenth Amendment.”⁴⁸

The NAACP also had evidence of how to lose a northern court case, in *Deal v. Cincinnati Board of Education* (1965). In this case, the parents of children in a Cincinnati school district had tried to convince the court that desegregation was required because their children went to a majority black school. Cincinnati operated its schools, like most of the country, under the neighborhood school concept. Much of the plaintiffs' evidence for why a remedy was needed concerned public and private housing discrimination that had denied them the right to move to another neighborhood and had caused their neighborhood to be

⁴⁸ Irving R. Kaufman “The New Rochelle Decision: The Facts,” *Journal of Educational Sociology* 36, no. 6 (February 1963): 267-268, <http://www.jstor.org.proxy.lib.umich.edu/action/showArticle?suffix=2264699> (Accessed March 20, 2009)

majority black. The District Court Judge, Judge Peck (who factors into this story in the next chapter), held that evidence of housing discrimination had no place in a trial over school segregation and therefore refused to accept it. The Sixth Circuit affirmed his ruling, stating, “The District Court correctly excluded evidence of alleged discrimination in the public and private housing markets. Such discrimination is caused, if in fact it does exist, by persons who are not parties to this case and the Board has no power to rectify that situation.”⁴⁹ It appeared clear that the line was that *de jure* segregation by school officials could be remedied through desegregation, but *de facto* (even if it was based on the actions of officials) could not.

With the NAACP looking to extend its own desegregation litigation into the North, the passage of Public Act 48 presented a perfect opportunity. While Detroit’s size meant that it was not an ideal place to begin their northern desegregation litigation, the NAACP viewed Act 48 as forcing its hand. “If you would have had your druthers, you would have picked a smaller city first,” says Paul Dimond, an attorney who became involved with the case as one of the counsel for the NAACP. “But, rightly or wrongly, the NAACP viewed Act 48 as the equivalent of nullification or interposition, both tools of Southern massive resistance [to desegregation] following *Brown*.”⁵⁰

Once the NAACP had decided to bring a case, they needed children under whose name to bring it. They ultimately found 21 children, but the case became known as *Bradley v. Milliken*. This occurred because, when the list of 21 was compiled, Ronald and Richard Bradley’s names were the first alphabetically. They had been made party to the case when their mother, Vera Bradley, had gone to the NAACP office in 1970 to complain about

⁴⁹ Deal v. Cincinnati Board of Education, 369 F. 2d, 55 (6th Cir. 1966).

⁵⁰ Paul Dimond, interview by author, Ann Arbor, MI, February 18, 2009 .

overcrowding conditions at Clinton Elementary, her sons' majority black school. Vera Bradley was not a committed integrationist but, like both the integrationists and the community control advocates, she had one simple goal: " 'I want to see the schools better'."⁵¹ When she heard about the case, she made her sons Richard and Ronald parties to it. On August 14, 1970, the NAACP filed a complaint in her sons' name alleging that public officials had intentionally segregated the Detroit school system, and *Bradley v. Milliken* was born.

Conclusion

Bradley v. Milliken was a case that emerged due to a conflict between many sources. White liberals, black community control advocates, black integrationists, and whites who desired neighborhood schools could not agree on the best path for Detroit schools. The vehemence of their disagreement, and their inability to compromise, led them down a road that finally ended in litigation with *Bradley v. Milliken*.

Central to understanding this thesis, however, is first the position of A.L. Zwerdling and the Detroit school board liberals. Having been elected in 1965 with the promise of great change, these men had suffered through years of underfunded schools that were experiencing increasing racial tension. Unable to alter the schools' fortunes, these men saw Coleman Young and his decentralization legislation as the final step in cementing their legacy of failure. Once decentralization passed, the idea of desegregation in Detroit would be forgotten forever.

When Coleman Young's legislation gave these men the authority to redraw the school districts, however, they saw the opportunity to alter that legacy. Despite fierce opposition from both sides, these men were unwilling to let the dream of integration die. Instead, they

⁵¹ William Grant, "Boy Plays Key Role in Busing Fight," *Detroit Free Press*, June 18, 1972.

passed a plan that, while far from ideal, integrated Detroit as much as was possible. For their efforts, these men were cast off the school board in a recall vote.

While the actions of the liberal school board provide important evidence that this situation was viewed as a “tipping point” in the city’s racial segregation, the views espoused by various community members at the school board meeting also illustrate this contention. For people on all sides of the debate, the political importance of this desegregation legislation far outweighed its actual effects. Both Mirel in The Rise and Fall of an Urban School System and Darden et al. in Detroit: Race and Uneven Development argued that this debate became as much about the political consequences as the actual results of this legislation, and the board meetings appear to bear out that contention. For white liberals and black integrationists, this was a tremendous step in overcoming both Detroit’s segregation and in beginning to push *Brown* into the north. For black community control advocates, in contrast, integration would do nothing more than continue the white subjugation of the black race; something more was needed. And, for whites demanding neighborhood schools, the ominous prospect that their neighborhoods could no longer protect their children from the city around them loomed.

The debate between the black integrationists and blacks who espoused community control deserves particular attention, as it mirrored a national debate. Like Vera Bradley, parents and activists on both sides of this divide simply desired equality. What had occurred, however, is that a disagreement had evolved over the best way to achieve equality. For some, the strategies of gradualism and assimilation that had been central to the civil rights movement for so long were still the best path; for others, dramatic action by blacks to seize power was the only means that equality would ever be realized. The central point, though, is

that both sides had the same goal in mind even if they had very different means of achieving it.

Regardless, once the NAACP filed a complaint, these debates became a moot point. Now, the outcome of desegregation lay in the hands of District Judge Steven Roth, a moderate white judge.

CHAPTER TWO: Judge Roth's Conversion

Introduction

The case before District Judge Stephen Roth began on August 18, 1970 with the filing of a complaint by the NAACP alleging that Public Act 48 was unconstitutional and asking the court to halt its implementation and to force the School Board to proceed with the implementation of the April 7 desegregation plan. Oddly enough, considering his later opinions, Judge Roth initially ruled against the NAACP on September 3, 1970, saying,

“The Proofs are not convincing that there has been a course of action which can be characterized as directed toward the maintenance of a dual system of schools, either de jure or de facto...To the contrary, the evidence before the Court indicates that there has been a conscious, deliberate, progress, and continuous attempt to promote and advance the integration of both pupils and faculty.”¹

Considering this ruling, how was it the very same Judge Roth who a little less than two years later, on June 14, 1972, ordered that plans begin for desegregation involving Detroit and fifty-three suburban districts? Clearly, something in the case made his opinion of Detroit's history change, and changed him from the mildly conservative justice who had been perched on the federal bench since 1962 into a man who tried to implement one of the most liberal and far-reaching desegregation plans ever envisioned.

This chapter is an attempt to illustrate the body of evidence that changed Judge Roth's mind. Through analysis of trial transcripts and Judge Roth's opinions, the portrait of a truly pragmatic man emerges. Judge Roth, initially, saw the case through his own eyes as a Hungarian immigrant. Having worked to achieve everything he had, and eventually becoming a District Judge, he believed in the “American Dream” and the idea that people could do whatever they set their minds to. He logically extended this viewpoint to blacks, and could not understand the possibility that society stopped them from living where they chose or achieving up to their abilities.

¹ Paul Dimond, *Beyond Busing* (Ann Arbor, M.I.: University of Michigan Press, 1985), 31.

The transcripts also illustrate that, as the trial progressed, Judge Roth dismissed this notion. The evidence brought to the trial by the NAACP convinced him that segregation in Detroit was real, that it was oppressive, and that it was unconstitutional. Once Judge Roth found the state and the school board liable for segregation, he felt it was his constitutional duty to undo that segregation to the best of his abilities. If he did not, Detroit would soon become a place where segregation was an established reality that could not be undone. Events throughout the trial had convinced Judge Roth that it was in his authority to involve the suburban school districts in a desegregation plan. When he came to the conclusion that this was the only way to affect the kind of real, lasting desegregation that was his constitutional duty, Judge Roth ordered a metropolitan plan.

The other goal of this chapter is to connect the trial the NAACP laid before Judge Roth with their national ambitions. Going into the trial, the NAACP felt that they must convince the judge that *de facto* (or “by fact”) segregation was a myth, and that what he considered *de facto* was in fact *de jure* (or “by law”). To this end, the organization brought housing evidence into a school desegregation case in hopes that the Judge would realize that northern segregation was interconnected, and therefore pave the way for northern cases against *de facto* segregation. Judge Roth’s opinions show the success of their efforts.

Judge Stephen Roth and the Initial Proceedings

Stephen J. Roth was born in Sajószöged, Hungary on April 21, 1908. His father immigrated to the United States in 1911 and began to work at a Buick plant in Flint, Michigan. In 1913, Roth and his mother followed his father to the United States. Roth graduated from high school and eventually worked his way through the University of Notre Dame and the University of Michigan Law School. In 1935, Roth went back to Flint to

practice law and quickly became a leading figure in the conservative, blue-collar wing of the state's Democratic party. Following this, he served in the U.S. Army during World War II and then became a state trial judge in Flint. Finally, in 1962, President John Kennedy appointed Roth to the federal bench.²

What is important in understanding Roth's background is his working-class beginnings, and the ideas that these beginnings had given him. "He was very conservative," opines Paul Dimond, one of the counsel in the case for the NAACP. "If I were to describe his attitude, he was of the kind of attitude 'I made it, why can't they?'"³ Judge Roth's working class background gave him little sympathy for the plight of minorities. Having immigrated to America when he was five, worked in factories for two years following his graduation from high school to pay for college, worked his way through law school, and then risen to become a Federal District Judge, he believed firmly in the concept of the "American Dream" and the idea that opportunity was open to all. These beliefs had given him a relatively conservative record on the bench and a reputation as a "jurist who demonstrated little sympathy for minority grievances."⁴

This was the judge who the NAACP drew for its case. Regardless, all parties involved on the side of the NAACP still believed that their complaint made a compelling argument that Act 48 violated the Constitution. For the NAACP, however, arguing that Act 48 was unconstitutional was no longer the only issue.

When the NAACP had initially agreed to take on this case, it was July 1970 and Zwerdling and the liberal school board had not yet been recalled. In fact, school superintendent Norman Drachler, who himself was a liberal in support of integration, felt that

²Ibid.

³ Paul Dimond, interview by the author, Ann Arbor, MI February 18, 2009.

⁴ Dimond, 31.

Act 48 was unconstitutional and had arranged a secret meeting with the NAACP lawyers in New York to urge them to take on the case. At the meeting, Drachler and school board officials had promised the NAACP that they would take further steps towards integration if the NAACP would help them obtain a declaration that Act 48 was unconstitutional. With the school board recalled, however, this promise no longer held. Even if Act 48 was declared unconstitutional, the new school board would likely shy away from enforcing the April 7 plan. This fact persuaded the NAACP that, if they wanted desegregation to occur, they were going to have to prove that *de jure* actions of the school board led to the school district's segregation.⁵

Having provided this essential background, it is now important to examine the NAACP's complaint. First, the complaint alleged that Public Act 48 violated the equal protection and due process clauses of the Fourteenth Amendment because it only applied to Detroit and thus did not allow Detroit to decide its own attendance zones, a right that was given to every other school district in Michigan. The NAACP complaint also noted that this distinction was further unconstitutional because Detroit was "where the bulk of Negro school children in the State of Michigan [we]re concentrated."⁶

The second argument was that Act 48 violated the Fourteenth Amendment because it impeded the legally mandated integration of public schools, and therefore "perpetuate[d] the segregation and racial isolation of the past and g[ave] it the stamp of legislative approval."⁷

This section of the complaint also alleged that the act built "upon the preexisting public and

⁵ Ibid., 29.

⁶ Complaint, Civil Action No. 35257, "In the United States District Court for the Eastern District of Michigan Southern Division," August 18, 1970: 9, Private Collections of John Runyan.

⁷ Ibid., 10.

private housing segregation.”⁸ Furthermore, by giving segregation a legal mandate, the complaint argued that the Act violated the Thirteenth Amendment because it relegated “Negro school children in the City of Detroit to a position of inferiority...thereby creating and perpetuating badges and incidents of slavery.”⁹

The final constitutional argument laid out by the NAACP was that blacks were being denied equal educational opportunities “because of the segregated pattern of pupil assignments and the racial identifiability of the schools in the Detroit public school system.”¹⁰ This denial of equal opportunities for education was again contrary to the language of the Thirteenth and Fourteenth Amendments.¹¹

Next, the NAACP proceeded to accuse the Detroit School Board of deliberate acts of segregation. These included allegations that the Board was discriminatory in “assigning students, designing attendance zones for elementary junior and senior high schools, planning future public educational facilities, constructing new schools, and utilizing or building upon the existing racially discriminatory patterns in both public and private housing on the basis of race and color of the children who are eligible to attend said schools.”¹² The complaint also accused the Board of “assigning faculty and staff members to the various schools in the Detroit school system on the basis of the race and color of the personnel to be assigned.”¹³

Looking at the specifics of the complaint is useful both because it illustrates how the NAACP intended to prosecute the case, and because it is helpful to know the specifics of the arguments when gauging Judge Roth’s initial reaction. What the complaint illustrates first is

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid, 11.

¹² Ibid.

¹³ Ibid., 11.

that the NAACP intended to tie Act 48 to interposition statutes in the South. Interposition was the idea that states could protect their citizens by nullifying unconstitutional decisions of the Supreme Court. This idea found its origin in the Virginia and Kentucky Resolutions in 1798, resolutions designed to combat John Adams's Alien and Sedition Acts. The idea of using interposition to combat desegregation had first been argued by James J. Kilpatrick, *Richmond News Leader* editor, in Virginia in 1956, and interposition statutes, designed to overturn court-ordered desegregation, had been passed and then overturned by the courts in numerous states throughout the South.¹⁴ Here, the NAACP was trying to advance the idea that the state of Michigan, by overturning the board's desegregation plan, had essentially done the same thing. While the Detroit desegregation plan was not explicitly court-ordered, the NAACP's argument was that any plan designed to desegregate a segregated school district was "court-ordered" due to *Brown v. Board of Education*.

While tying Act 48 to Southern interposition was a subtle argument, the NAACP's overt reference to slavery indicated the gravity with which they viewed the state's actions. By suggesting that segregation of the schools furthered the "badges and incidents of slavery,"¹⁵ the NAACP illustrated firmly why the situation must be resolved. This section of the complaint also mentioned the public and private housing segregation that was to become central to the NAACP's case as time progressed.

The final piece of this complaint is perhaps the most interesting. As Paul Dimond recounts in *Beyond Busing*, Nate Jones, general counsel of the NAACP, understood that the

¹⁴ Joseph J. Thorndike " 'The Sometimes Sordid Level of Race and Segregation': James J. Kilpatrick and the Virginia Campaign against *Brown*," in *The Moderates' Dilemma*, ed. Matthew Lassiter and Andrew Lewis (Charlottesville: University Press of Virginia, 1998), 56-57.

¹⁵ Complaint, August 18, 1970, Private Collections of John Runyan, 10.

organization must show actual *de jure* segregation if they wanted to win the case. An ulterior motive, however, was to illustrate that

“what most judges and the public perceived as *de facto* or adventitious segregation was what we knew to be...*de jure* or official segregation and intentional discrimination, public and private. We knew we had to find the proof and the tools of persuasion to show that racial discrimination—not free choice, economics, or happenstance—caused the current segregation in schools and housing.”¹⁶

Thus, the organization included both *de jure* acts of segregation committed by the school board as well as things, such as housing, that would traditionally be perceived as *de facto* segregation. Their goal was both to prove that the Detroit schools committed *de jure* segregation, as well as to blur the line that had been established in the North between *de jure* and *de facto* segregation.

As noted above, Judge Roth denied the NAACP’s request for a preliminary injunction the month after the suit was filed. In fact, despite the allegations that the school board had acted in a way to deliberately promote segregation, Judge Roth opined quite the opposite, suggesting that the evidence showed him that the school board had in fact acted to promote the cause of integration (which is odd when one considers the fact that there had been no true trial where he had been shown evidence). In addition, Judge Roth explicitly ruled out the idea that a system of segregated schools “either *de facto* or *de jure*”¹⁷ existed. Finally, Judge Roth concurred with the defendants that the Governor of Michigan and the Attorney General had no place in the case, and removed them as defendants.¹⁸ Frankly, on all fronts, Judge Roth’s opinion was a sweeping defeat for the cause of the NAACP.

The Sixth Circuit Appeals and the Return of the Case

¹⁶ Dimond, 30.

¹⁷ Ibid., 31.

¹⁸ Ibid., 31.

Undeterred by Judge Roth's ruling, the NAACP appealed the decision. Their appeal, because Judge Roth's jurisdiction was the Eastern District of Michigan, went to the United States Sixth Circuit Court of Appeals, located in Cincinnati, Ohio. The Sixth Circuit Court of Appeals held jurisdiction over federal district courts in Kentucky, Michigan, Ohio, and Tennessee.

Why is the jurisdiction of the Sixth Circuit important? Primarily because it provides some background on the decision it reached regarding the NAACP's appeal of Judge Roth's decision. The Sixth Circuit contains states that are both northern (Michigan and Ohio) and southern (Kentucky and Tennessee). Due to their experiences with southern school desegregation, the Sixth Circuit justices would likely understand the NAACP's argument that Public Act 48 functioned, in practice, the same way as a nullification statute in the South.

Initially, the Sixth Circuit was not entirely receptive to the demands of the NAACP. The NAACP wanted an injunction to force the school district to halt the implementation of Act 48 until the appeal was resolved. Chief Justice Harry Phillips (who was from Nashville, Tennessee) of the Sixth Circuit held a hearing on September 8, 1970 to consider the injunction request, and ultimately denied it. He decided, however, to allow the NAACP to present their argument against Act 48 before a three-judge panel of the Sixth Circuit—as was custom in appeals cases—on October 2 in Cincinnati. The three justices who heard the case were Justice Phillips himself, Justice George Edwards of Detroit, and Justice John Peck from Cincinnati.¹⁹

These justices issued their opinion on October 13. They agreed that “state action cannot be interposed to delay, obstruct, or nullify steps lawfully taken for the purpose of

¹⁹ Jennifer Huff, “‘The Only Feasible Desegregation Plan’ Milliken v. Bradley and Judge Roth’s Order for Cross-District Busing,” *The Court Legacy* 15, no. 2 (2008): 7.

protecting rights guaranteed by the Fourteenth Amendment”²⁰ and that Public Act 48 was exactly this type of state action. Despite finding that Public Act 48 was unconstitutional, the Court of Appeals was unwilling to express an opinion on the April 7, 1970 plan. Instead, they believed that “the issues presented in this case, involving the public school system of a large city, can best be determined only after a full evidentiary hearing.”²¹ The Court of Appeals also reversed Judge Roth’s dismissal of the Governor and Attorney General of Michigan from the case, and held that these state officials should be party to the case due to their attempts at interposition through Public Act 48.²²

With this stern rebuke from the Sixth Circuit, Judge Roth decided there must be some solution to the state’s rollback of the desegregation plan. In this vein, he ordered the Detroit Board of Education to submit to the court, by November 16, “‘a high school attendance plan’ consisting of the April 7 plan ‘or an updated version thereof which achieves no less pupil integration’ to be implemented the first day of the second semester.”²³

Here, again, the board held a meeting in which many opponents of any desegregation plan appeared. The board had received plans from many disparate sources, with some (such as the NAACP plan) suggesting more busing than would have occurred under the April 7 plan, and others (such as the “Magnet” plan) offering students a vast array of choices under which it was possible that no integration at all would occur.²⁴

The board, after some consideration, chose to present to Judge Roth three plans: the “magnet” plan “calling for the creation of several special schools at the high school and

²⁰ Bradley v. Milliken, 433 F.2d 897, 903 (6th Cir. 1970).

²¹ Ibid., 905.

²² Ibid.

²³ Dimond, 35.

²⁴ Proposals in the Matter of School Integration in Detroit Public Schools Community Relations Division, Box 8, File 5, Archives of Labor and Urban Affairs, Wayne State University.

junior high levels to draw a biracial enrollment voluntarily; a part-time plan calling for specialized courses to attract a biracial enrollment for portions of the school day; and the April 7 plan.”²⁵

Hearings on these options were held before Judge Roth on November 18, 19, and 25, 1970. These hearings began on November 18 with School Board member Patrick McDonald as a witness. McDonald was one of the School Board members who voted against the April 7 plan as well as the one who leaked the plan to the newspapers, and he was therefore not one of the members recalled on August 4th. He presented the School Board’s Plan A, alternatively known as the “magnet plan” or the McDonald plan. The “magnet plan” envisioned allowing high school and junior high students to choose a specialty, such as English, and then converting various high schools and junior highs to teach this specialty. In this way, Detroit could achieve voluntary desegregation and, according to McDonald, also achieve the goal of “quality education or an improvement in the present form of education.”²⁶

Next to testify was Carol Campbell, a board member who had been appointed by Governor Milliken to fill one of the seats vacated due to the recall. Campbell presented her plan, whereby students would take their 80 credits of required courses at their home high school, and 80 credits of electives at another high school. Part of Campbell’s plan was that students would have to rank electives and would not necessarily get their top choice, but instead that the board would ensure that all elective classes were racially integrated.²⁷ Furthermore, based on the judge’s questioning, Mrs. Campbell asserted her belief that, for the magnet plan, “the voluntary aspect of the plan will be its defeat so far as substantial

²⁵ Dimond 35.

²⁶ Bradley v. Milliken, Transcripts of Proceedings had on Plan A and Plan B before Honorable Stephen J. Roth, November 18, 1970: 22, Private Collections of John Runyan.

²⁷ Ibid., 73-76.

[desegregation] progress is concerned”.²⁸ What Mrs. Campbell meant was that, because the magnet plan allowed children the option of where to go to school based on what specialty they chose, children of one race could all choose a certain specialty in order to remain at their neighborhood school and thus integration would not occur. Her plan, by basing the electives children were placed in partially on racial integration, would eliminate this problem.

Following Mrs. Campbell, the case proceeded on November 19. Every member of the school board was called, and gave their view of the plans before the court. One of the members who was called was Dr. Cornelius Golightly, one of the board’s three blacks (at the time of the trial, the board had seven members, three black and four white). Dr. Golightly testified that a new school board would be coming in January 1, 1971 with thirteen members and a racial composition of ten white and three black members.²⁹ Perhaps more enlightening about Dr. Golightly’s testimony, however, was his interaction with Judge Roth. In describing segregation, Dr. Golightly elicited this response from Judge Roth:

“Well, as a matter of personal history I didn’t know what segregation was until I grew up. For your information I grew up in an integrated neighborhood and it took me some years to learn about segregation so I will not be lectured on that point.”³⁰

Judge Roth illustrated here that he had no personal concept of segregation, and that he did not care at this point to be lectured about it. Furthermore, during the examination of member McDonald, which continued on November 19, the lawyer for the NAACP tried to present evidence about other plans before the board that had been rejected at their meeting. Judge

²⁸ Ibid., 110.

²⁹ Bradley v. Milliken, Transcripts on Proceedings had on Plan A and Plan B before Honorable Stephen J. Roth, November 19, 1970: 152-152, Private Collections of John Runyan.

³⁰ Ibid., 159.

Roth made it clear that he was only considering the three plans brought before him by the board, and that he would either rule to implement one of those plans, or no plan at all.³¹

Judge Roth's questions of witnesses throughout the trial also show his thinking process. While the NAACP tried to show that the April 7 plan was the only plan that would achieve any substantial desegregation, Judge Roth chose to ask members of the school board if they believed that "all of the plans or each of the plans would be a step forward."³² From his own experiences with the hostility that currently existed to desegregation in Detroit, as well as the testimony of the board members, Judge Roth understood that the "magnet plan" was likely to cause the least controversy because it left the option of where to attend school fully with the children and their parents. Carol Campbell's plan was likely to engender more complaints because, while it let children rank their electives, assignment to these electives was based partially on achieving racial balance and therefore the plan was not fully voluntary. The April 7 plan was likely to generate the most controversy (as it already had) because it involved giving students no choice over the high school they were assigned to. The board's desire to avoid controversy was why they preferred the "magnet plan" over member Campbell's plan, and liked the April 7 plan the least.³³ Furthermore, school board member John Mogk's testimony had confirmed the judge's suspicions that, if he left the board to its own devices, they would do absolutely nothing and leave the problem for the new board that was to assume office in January.³⁴

Feeling that due to the Sixth Circuit ruling he must do something, but still unwilling to accept the realities of segregation and upset the community, Judge Roth issued his ruling

³¹ Ibid., 185.

³² Ibid., 172.

³³ Transcripts, November 18, 149-150.

³⁴ Ibid, 167.

on December 3. He ordered the school board to implement Plan A, the “magnet school” plan, beginning with the second semester of the current school year, which was scheduled to start on February 1, 1971.³⁵

In addition to issuing his ruling, however, Judge Roth held a press conference in his office where he described the ruling for the gathered press. At this press conference, he “called the NAACP attorneys ‘outsiders [who] should go away and let Detroit solve its own problems’.”³⁶ This outright hostility to the NAACP position led Paul Dimond to write a brief that the NAACP ultimately chose not to file. This brief asked the Sixth Circuit to recuse Judge Roth from the case due to his obvious bias.³⁷

The NAACP once again appealed to the Sixth Circuit, arguing that the “magnet school” plan was unconstitutional because “it [only] created ‘one way’ desegregation – that is blacks would move to white schools, but whites would not move to black schools.” This time, the Sixth Circuit ruled against the NAACP, but it did order Judge Roth to hold a full trial on the merits of the NAACP’s claims of *de jure* segregation against the school board.³⁸

Judge Roth cleared his calendar, and the trial on these claims began on April 6, 1971.

The Trial on its Merits

Before proceeding, it is once again necessary to turn to Judge Roth. Throughout this chapter, an image of him as unresponsive and even openly hostile to the NAACP has emerged. While this has an element of truth, Judge Roth’s attitude had softened slightly by the time the trial on its merits began. “After the second Sixth Circuit remand, he was willing to listen,” says Paul Dimond. “In one way, I think he thought we were just from out of town

³⁵ Huff, 8.

³⁶ Dimond, 36.

³⁷ Dimond, interview.

³⁸ Huff, 8.

and we would go away. When the Sixth Circuit remanded and said there had to be this whole hearing, he changed. When people argued [later] about whether under the rules of evidence something was going to be admissible or not, he'd say, 'I'm a justice of the peace here, there isn't any jury. We can separate out what's admissible and what's not. Just put on what you are going to put on'."³⁹

This newfound openness of Judge Roth would prove essential to the NAACP as the trial progressed. Dimond and the other NAACP attorneys determined that the way to win the case was to attack what, at the time, was an established precedent of the Sixth Circuit. In *Deal v. Cincinnati Board of Education*, the Sixth Circuit had held that evidence of housing discrimination in private and public housing markets has no place in a trial over school desegregation, and that a judge was perfectly justified in excluding that evidence from trial.⁴⁰ Despite this ruling, the NAACP realized the only way they were going to change Judge Roth's opinion was to attack the proposition that black families had been given a free choice of where in Detroit they could live. In addition, attacking this proposition successfully would open up the possibility for the NAACP of bringing cases against *de facto* segregation throughout the north. Because the Governor and the Attorney General were still parties to the case, the lawyers believed they could present evidence of housing discrimination at a state and local level. If they could get Judge Roth to allow them to present this evidence, they believed they could change his opinion. As Dimond says, "We didn't think we had a shot unless we converted him to the view that there was a pervasive discrimination underlying this whole situation."⁴¹

³⁹ Dimond, interview.

⁴⁰ *Deal v. Cincinnati Board of Education*, 369 F.2d 55, 60 (6th Cir. 1966).

⁴¹ Dimond, interview.

The NAACP lawyers determined to open the case with a thorough presentation of the housing discrimination evidence, and then illustrate the specific acts of *de jure* segregation perpetrated by the Board. With this in mind, the case opened on April 6, 1971.

On the first day, the direction of the trial became clear. While the NAACP chose as their first witness Roy Stephens, a school board member from 1954 to 1966 who testified about the segregation of Detroit schools during that time, the case's early focus on housing began after Stephens testified. Paul Dimond explained to the court that the plaintiffs' proofs in the case were going to show that "there [had] been a pattern of racial containment by schools, and it [was] also in force in the housing market and that oftentimes school systems, north and south, built upon [that] residential segregation."⁴² Mr. Dimond made this statement while calling Judge Roth's attention to numerous cases of the Michigan Supreme Court saying that racially restrictive housing covenants were judicially enforceable. Dimond's attempt to have the judge make judicial note of these decisions set off an exchange which highlighted the key to the trial:

"Mr. Krasicky [(counsel for Governor Milliken)]: As we understand the law in this circuit, proofs of discrimination in housing by private and public agencies other than the defendants in this case are not admissible. That is what *Deal* held and it is the law in this circuit, and we are going to make this objection over and over...

The Court [(Judge Roth)]: The objection is overruled. I tried to indicate at the very outset of this case that I understood the theories of the parties in this case. I think I do, and I'm going to allow all of you to make as complete a record as you wish. Sustain your positions."⁴³

Here, captured briefly, is concrete evidence of Paul Dimond's recollections. Despite *Deal*, Judge Roth had determined that he would allow both sides to make their case as fully as they could, including presentations of evidence of housing discrimination by the NAACP. He later

⁴² Bradley v. Milliken, Transcript of Proceedings had before Honorable Stephen J. Roth, April 6, 1971: 128, Personal Collections of John Runyan.

⁴³ Ibid., 129.

commented that it was not his job to predict what the Sixth Circuit or Supreme Court would rule, but that he would give the attorneys all the latitude possible.

As the housing evidence proceeded, however, it also became clear how much work was going to be required to change Judge Roth's position. Richard Marks, who was presented to the court and accepted as an expert on racial occupancy in Detroit, testified for an extended period about all the methods of "containment" of blacks, methods that have been described in the introduction to this thesis. Judge Roth questioned Mr. Marks following his testimony about whether blacks could just be like other ethnic groups, and grouped together in housing out of preference. Marks described to the judge that, if you looked at the occupancy of other ethnic groups, they moved to a city, but then put roots down and "as soon as those roots are down he [the new immigrant] is established as part of the community and he begins to move. He moves where his job and his emerging status take him which has been to housing elsewhere." In terms of blacks, however, Marks described to the judge how blacks, like other groups, have made "the effort to cross the line only to be in fact held in as a contained population."⁴⁴

Hence, the first day of trial bears and illustrates both the positives features of Judge Roth's nature that were critical to the NAACP's ability to make their case, as well as the tremendous amount of work that was going to be required to undo Judge Roth's preconceptions. As to his positives features, Judge Roth clearly indicated from the beginning that he was going to let both sides make as full a case before him as they planned, and he was not going to concern himself with what the Court of Appeals or the Supreme Court might do. This attitude allowed the NAACP to present the housing evidence they had prepared, and

⁴⁴ Ibid., 176-177.

eventually change Judge Roth's mind about the nature of the discrimination encountered by blacks in Detroit.

This first day of the merits trial also showed just how much work was going to be needed to convince Judge Roth that Detroit's segregation was of anything other than a *de facto* nature. An immigrant himself, Judge Roth no doubt had an idea that perhaps blacks were just the same as the Eastern Europeans he had lived with in Flint. They gathered together because they preferred living with their own community, and eventually some branched out into the surrounding community while others stayed. What Marks's testimony was meant to illustrate was that, while perhaps blacks from the South coming to Detroit initially lived together for comfort, they never got to the second step of the equation: they never moved out into the surrounding community because that community would not accept them. This was the critical difference, and one the NAACP felt Roth would have to understand before he could accurately look at the evidence they had gathered.

Over the next few days of trial, the NAACP presented witnesses whose efforts were directed at trying to change Judge Roth's view of this problem. On April 7, the plaintiff's first witness was Allen Priestley, an attorney for the Burton Abstract & Title Company, who testified about the continuance of racial restrictions in abstracts and title insurance policies until 1969 in Detroit despite the Federal Housing Administration's (FHA) own reversal of policy on the practice in 1950.⁴⁵ Their second witness was James Bush, the coordinator of the Housing and Education Divisions of the Detroit Commission on Community Relations. He testified about the problems with finding sites for public housing projects in Detroit because of white's resistance to blacks moving into their neighborhoods and the Housing

⁴⁵ Bradley v. Milliken, Transcript of Proceedings had before Honorable Stephen J. Roth, April 7, 1971: 185-187, Personal Collections of John Runyan.

Commissions stated policy of never placing a public development that would change the “racial characteristics” of the neighborhood. While Judge Roth accepted this testimony as a “historical fact,” testimony on this day did not appear to substantially move him. He remarked that it appeared unnecessary, and that perhaps “stipulation on the historical background of housing in the City of Detroit” would have been a more efficient use of the court’s time.⁴⁶

On April 8, however, the plaintiffs finally found an approach that stuck with Judge Roth. This breakthrough was no miraculous accident, but instead was a key part of the NAACP’s trial strategy. The witness on this day was Dr. Karl Taeuber, the chairman of the Department of Sociology at the University of Wisconsin who had written numerous books on population trends of blacks within urban areas of the United States. Much of Dr. Taeuber’s testimony concerned two segregation indexes he had developed, one which was called the segregation index and measured how segregated a city was, and the other called the replacement index, which measured what percentage of the population you would have to move to achieve desegregation. While Detroit’s segregation index was going down, its replacement index was going up. For the segregation index, moving people around to achieve desegregation was a statistical concept, whereas the replacement index accounted for the fact that you would not abandon certain parts of the city in order to achieve desegregation, for example. Essentially, these numbers meant that blacks were moving into formerly white areas, but that the concentration of blacks within the black areas was getting so great that desegregation was becoming harder and harder to achieve.⁴⁷ While the basis of these numbers is hard to understand, and harder to explain, the importance of them to the

⁴⁶ Ibid. 200-232, 241-293.

⁴⁷ Bradley v. Milliken, Transcript of Proceedings had before Honorable Stephen J. Roth, April 8, 1971: 350-355, Personal Collections of John Runyan.

NAACP's case was not how Dr. Taeuber arrived at them, or even the numbers themselves necessarily, but instead how he used them.

Dr. Taeuber then proceeded to use these numbers to analyze three commonly believed causes of *de facto* segregation: economic status, a group preferring to live with its own members, and mechanisms of discrimination. Dr. Taeuber first used these numbers to show that poor blacks were not living with poor whites, and rich blacks were not living with rich whites. He showed what the segregation index would be if blacks lived somewhere based simply on rent or how expensive their home was, and showed that it would be about one-fifth the segregation that was actually found.⁴⁸

Next, Dr. Taeuber took on the notion that people preferred to live with others such as themselves. For blacks, he first pointed to a 1966 national survey of blacks suggesting that 68 percent of the black population would prefer to live in integrated neighborhoods rather than black-only neighborhoods. Dr. Taeuber also used the statistics he had cited earlier to show that those blacks who moved from predominately black areas to predominately white areas tended to be the wealthier ones, suggesting that those among the black population “who can afford to do so...try to escape the worse housing and seek better housing.”⁴⁹

Beyond these examples, however, the NAACP had requested Dr. Taeuber calculate these numbers for the Polish population of Detroit to show the difference between what had been done to blacks, and a discrete ethnic community. The Polish population was used both because it was a substantial ethnic population in Detroit at the time, and because of Judge Roth's own Eastern European origins.⁵⁰ The NAACP also wanted Dr. Taeuber to further refute Judge Roth's suggestion to Richard Marks on the first day that perhaps blacks were

⁴⁸ Ibid., 358-362.

⁴⁹ Ibid., 362-363.

⁵⁰ Dimond, interview.

simply like other ethnic minorities and grouped together out of preference. Dr. Taeuber showed how the numbers for first and second-generation Polish immigrants indicated substantial segregation in 1960, but nothing close to the segregation experienced by blacks. Furthermore, Dr. Taeuber testified that these numbers did not hold at all by the time you got to even the third or fourth generation, and that by that times most Polish people had integrated so thoroughly as to be indistinguishable.⁵¹

On cross-examination, the trouble Judge Roth was having understanding this concept became noticeable. The defense counsel asked if perhaps there was a reason blacks were more segregated than the Polish, that the Polish lost their culture after one generation whereas blacks were a group “who actually ha[d] created [their] own culture right here.” Dr. Taeuber suggested that blacks had been here hundreds of years, and lived in many different regions, and that the idea of a black culture was ridiculous. Judge Roth asked for clarification that Taeuber was asserting there was no black culture, saying “My impression is that most black people think there is such thing,” and Taeuber proceeded to explain how, except perhaps for some things on the “periphery,” blacks were no different from whites in America in terms of “fundamentals of life style.”⁵²

The next four days of trial also concerned housing. They went from April 13-16, 1971 and involved realtors who testified to the existence of racial covenants, as well as one black man who testified to his difficulty in finding housing in Southfield, a white suburb of the city. Following Karl Taeuber, however, the NAACP believed they had finally converted Judge Roth. “After Taeuber did Polish...you could just see Judge Roth going, ‘hmm’,” recalls Paul Dimond. “This was the last myth [he held] about causation about racial

⁵¹ Transcripts, April 8, 1971, 373-377.

⁵² Ibid., 396.

separation...I think its fair to say when we sat down after that 10 to 12 days of trial, I think everyone in the courtroom understood [where he was]. They didn't know how Judge Roth was going to rule, but they understood that he'd changed his mind about this being an ethnic phenomenon and that it really had a racial component that not only couldn't be denied, but was egregious and violated some sense of fairness."⁵³

Having been allowed to present their housing proofs, the NAACP proceeded over the next several days of the trial to show specific acts of *de jure* segregation committed by the Detroit school board. While they may have believed that housing proofs should be enough, the examples of *Deal* and the New Rochelle case had illustrated to them that specific acts of *de jure* segregation must be shown for their case to have any chance of success.

The NAACP like would not have included *de jure* segregation in its original complaint without the recall of the school board. This suggests that the organization, when it filed its original complaint, did not necessarily have concrete evidence of *de jure* segregation, but instead included this in the complaint because they knew it was the only way desegregation was going to occur. Over the months proceeding the trial on its merits, however, the NAACP had found significant examples of *de jure* segregation by the school system, and this part of the trial flowed relatively smoothly.

While the NAACP showed numerous examples of *de jure* segregation over these days of the trial, I will examine a few closely here in order to illustrate the nature of the violations they found. The NAACP chose to call experts in school segregation, desegregation plans, educational administration, and other related fields. Of particular note was Dr. Gordon Foster, the associate professor of education at Miami and the director of the Florida School Desegregation Consulting Center, a federally-funded center created under Title 4 of the 1964

⁵³ Dimond, interview.

Civil Rights Act. Dr. Foster testified as an expert in the field on different methods of school segregation he had seen throughout the school systems he had studied. These methods included using optional zones where children could choose to go to one of two high schools, manipulating of zone lines to ensure schools stayed racially identifiable, busing students to a school and then keeping them all in one class, relieving overcrowding by bussing students past schools with capacity to schools farther away that conform to their race, allowing for a liberal transfer policy from schools, and the site selections of schools. Through examination by the NAACP lawyers, Dr. Foster illustrated how each of these factors were at work in the Detroit school system.⁵⁴

However, sensing that the testimony of experts would not be enough, the NAACP also called the parents of children who had experienced these various methods. For example, on April 29, 1971 the NAACP called Inez Kimble to the stand. Mrs. Kimble, a black woman, testified that, in June 1970, she received notice that the next school year her child was being transferred from A.L Holmes Elementary School, a majority black school, to Pulaski, a majority white school, due to overcrowding at A.L Holmes and space at Pulaski. Before the school year began, however, Mrs. Kimble and all the parents at A.L Holmes who had received notice that their children would be bussed to Pulaski received subsequent notice that all their children were actually to be transferred to McGraw school, a majority black school with “better facilities” that was farther away from their neighborhood than Pulaski. When they inquired, they found that space was still available at Pulaski but no one would tell them why their children were not being transferred there. Mrs. Kimble’s testimony, along with that of other parents from A.L. Holmes, suggested that the board had chosen to bus these children

⁵⁴ Bradley v. Milliken, Transcript of Proceedings had before Honorable Stephen J. Roth, May 5, 1971: 1396-1403, Personal Collections of John Runyan.

to McGraw in order to keep the racial composition of Pulaski white, and the racial composition of McGraw black.⁵⁵

The NAACP proceeded in this manner to prove that Detroit engaged in all of the methods of segregation that Dr. Foster had mentioned. They brought in former board members who testified that optional school zones, which were school zones where children had the choice of going to one school or another, had been created in various parts of Detroit in times of changing racial demographics and had operated with the effect of separating students by race. They also brought in administrators who testified about the changing of school zones to make schools racially identifiable, as well as the placement of new schools to ensure that these schools would have racial characteristics. The placement of new schools was under the authority of the state, and thus the fact that new schools were placed with racial considerations implicated the state in the school board's *de jure* segregation. Overall, the NAACP proved a comprehensive and thorough case of *de jure* segregation against the school board and the state.⁵⁶

With the plaintiff's case concluded, a few words must be reserved for the defense in the trial. The defense had refused throughout the trial to acknowledge that any housing evidence was relevant to the case and therefore did not give any testimony to refute this part of the case. Instead, their attempts were more to frame the positives the School Board had done in terms of faculty integration to refute the plaintiff's claims that decisions on optional school zones or bussing were racially based. For this, the bulk of their case relied on calling school administrators.

⁵⁵ Bradley v. Milliken, Transcript of Proceedings had before Honorable Stephen J. Roth, April 29, 1971: 1150-1161, Personal Collections of John Runyan.

⁵⁶ Bradley v. Milliken, Transcripts of proceedings had before the honorable Stephen J. Roth, April 29-May 14, 1971, Personal Collections of John Runyan.

The Decision

In discussing the transformation of Judge Roth's viewpoint, one must necessarily rely on the words of others at the trial, as well as his brief comments within the transcripts. If any transformation truly occurred, however, the best evidence for its existence is in his opinion.

Judge Roth issued his decision in *Bradley v. Milliken* on September 27, 1971. Following the necessary formalities of describing the history of the case, he chose to begin his opinion at a very odd point: by referencing the history of Detroit's changing racial population. Using numbers gleaned from earlier censuses, Judge Roth illustrated how Detroit was a city with a rapidly expanding black population and a rapidly shrinking white population, particularly in the years 1960-1970. Judge Roth chose to focus particularly on the school age population, showing how in these 10 years the percentage decrease in white students in Detroit schools was even greater than the percentage decrease in the white population of the city, and the percentage increase in black students was greater than the percentage increase in the black population.⁵⁷

Following the suggestion of these numbers, Judge Roth offered a paragraph that truly illustrated the case's effect on him:

“The City of Detroit is a community generally divided by racial lines. Residential segregation within the city and throughout the larger metropolitan area is substantial, pervasive and of long standing. Black citizens are located in separate and distinct areas within the city and are not generally to be found in the suburbs. While the racially unrestricted choice of black persons and economic factors may have played some part in the development of this pattern of residential segregation, it is, in the main, the result of past and present practices and customs of racial discrimination, both public and private, which have and do restrict the housing opportunities of black people. On the record there can be no other finding.”⁵⁸

⁵⁷ *Bradley v. Milliken*, 338 F. Supp 582, 585-587 (E.D. Mich. 1971).

⁵⁸ *Ibid.*, 586-587.

Judge Roth had, in the formal record, just stated that what was commonly looked at as *de facto* segregation was, in fact, *de jure*. Furthermore, he had turned away from the idea that blacks lived together simply because they wanted to. The Judge continued, “governmental 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 area.”⁵⁹ What Judge Roth understood was that everyone was complicit in allowing this segregation to occur. He did not believe that the various levels of government could be looked at as separate units, but instead were all related. Therefore, while residential segregation had caused school segregation, Judge Roth also felt that the actions of schools to ensure continued school segregation had reinforced residential segregation. Just as the NAACP wanted, the judge had realized that northern segregation was interconnected.

Furthermore, Judge Roth’s use of the numbers illustrated that he saw that this was the time when the problem had to be solved. He wrote that if present trends continued, “the percentage of black students in Detroit Public Schools in 1975-76 [would] be 72%, in 1980-81 it [would] be 80.7% and in 1992 it [would] be virtually 100%.”⁶⁰ Judge Roth believed that, if he did not act now, the entire school population would be segregated in 20 years.

Judge Roth went on in his opinion to list the various specific instances of school segregation. These included optional attendance zones in racially changing neighborhoods to ensure that whites could remain at all white schools, changing attendance zones, grade structures, and feeding patterns, building schools in areas to ensure they would have a certain

⁵⁹ Ibid., 587.

⁶⁰ Ibid., 585.

racial composition, and bussing black students to further away black schools to relieve overcrowding when white schools were available closer by.⁶¹

In terms of the state as a defendant, Judge Roth had already listed its failures with respect to housing, but he also sought to point out educational inequities they had perpetuated. In particular, he found that “the state aid formula whereby suburban districts were able to make far larger per pupil expenditures despite less tax effort [had] created and perpetuated systematic educational inequities.”⁶² This, in addition to his findings that their placement of schools was racially based, made the state liable for the segregation and inequity present in Detroit schools.

Judge Roth’s ending paragraph, before his findings of law, is perhaps most indicative of the change the NAACP’s case had on him. He stated that the principal causes of segregation “have been population movements and housing patterns, but state and local government actions, including school board actions, have played a substantial role...[but] if racial segregation in our public schools is an evil, then it should make no difference whether we classify it *de jure* or *de facto*.”⁶³ The NAACP had gone into the case hoping for a result just like this, one that said that the distinction between *de jure* and *de facto* segregation should not matter, and Judge Roth had delivered.

Judge Roth’s findings of law offered one final point to show that he now rejected the distinction between *de jure* and *de facto*. His sixth finding, that the School Board had an obligation to “adopt and implement pupil assignment practices and policies that compensate for and avoid incorporation into the school system [of] the effects of residential racial

⁶¹ Ibid., 587-590.

⁶² Ibid, 589.

⁶³ Ibid, 592.

segregation”⁶⁴ seems interesting in light of *Deal*. Judge Roth’s ruling seems to suggest that, had the School Board done nothing (which he clearly did not believe, as most of his other findings referenced the numerous examples of *de jure* segregation described before), the fact that they had enforced “neighborhood schools” in a segregated community, with no attempts to overcome this segregation, would have made them culpable under the Fourteenth Amendment. This is the opposite of the reading of the law in *Deal*, which stated that “there [was] no constitutional duty on the part of the Board to bus Negro or white children out of their neighborhoods or to transfer classes for the sole purpose of alleviating racial imbalance that it did not cause, nor [was] there a like duty to select new school sites solely in furtherance of such a purpose.”⁶⁵ Judge Roth had become convinced by the NAACP’s case that *de facto* segregation, at least in Detroit, was a myth. Instead, numerous state agencies had combined to deny black people their fundamental rights, and it was now the duty of these agencies to right this wrong.

Judge Roth thus ruled that Detroit had maintained a school system that participated in *de jure* segregation and that, as “the responsibility for providing education to all children on constitutional terms is ultimately that of the state,”⁶⁶ the state was liable too. He therefore ruled that clearly some relief for this constitutional violation must occur, and that a relief conference would begin in his courtroom on October 4, 1971.

The Remedy

How did Judge Roth arrive at a metropolitan desegregation plan? Despite the claims of his critics, it was not the master scheme of a radical who had sought to use the schools to achieve integration all along; on the contrary, this chapter refutes that very notion of Judge

⁶⁴ *Ibid.*, 593.

⁶⁵ *Deal v. Cincinnati Board of Education*, 61.

⁶⁶ *Bradley v. Milliken*, 338 F. Supp 25 593.

Roth. Rather, there had been hints throughout the case that a metropolitan remedy might be the solution should Judge Roth find that Detroit's schools were segregated.

These hints had begun early in the case, during the housing proofs, with the deposition of Martin Sloane on April 13, 1971. Mr. Sloane was the Chief of the Housing Section of the U.S. Commission on Civil Rights from 1961 until 1962, worked in the office of the Housing and Home Finance Agency from 1962 until 1966, and returned to the Commission on Civil Rights in 1966. Mr. Sloane was brought forward to testify about the relationship between housing and school segregation because of federal policies, particularly those of the Federal Housing Administration (FHA).

Mr. Sloane was on the stand being cross-examined by Alex Ritchie, a lawyer for the Citizens Committee For a Better Education (CCBE), one of the intervening defendants in the case and also the group that had led the successful recall effort against the four board members who voted for the April 7 plan. The CCBE was a group of concerned white citizens within Detroit, and they therefore felt that, if there had to be a desegregation plan, it should involve the suburbs too. In this way, at least there would still be whites in the majority in all the school districts and a desegregation plan would not result in massive white flight making Detroit an even large majority black city.⁶⁷ Mr. Ritchie therefore, oddly enough, was for a metropolitan desegregation plan if desegregation had to happen at all.

Ritchie's questioning of Sloane reflected this. Ritchie questioned Sloane about Sloane's native city, Washington D.C., and how the white population had departed from it to the suburbs. He then asked Sloane if, in his expert opinion, such an exodus would happen with a desegregation plan that only involved the city. When Mr. Sloane said he did not know Detroit well enough to make such predictions, and Judge Roth interjected, asking if a

⁶⁷ Huff, 9.

desegregation plan involving only the city would “lead really to an abandonment in large numbers by white folks so that when you ended up with the city you’d have a city that was no more integrated than it was when you started?” When Mr. Ritchie answered that yes, he believed that would occur, Judge Roth replied “Well, I don’t know whether fortunately or unfortunately this lawsuit is limited to the City of Detroit and the school system.”⁶⁸

This was not the end, however, of the discussion about a metropolitan solution on this day. Following Mr. Ritchie’s testimony, J. Harold Flannery, another of the NAACP’s attorneys, interjected,

“Other courts as a matter of relief have addressed themselves to the viability of metropolitan solutions, and if this record should disclose that school children in the City of Detroit cannot be afforded equal protection of the laws, equal educational opportunity, measured against the requirement of equal protection of the laws, we have the State as a defendant in this action. We are not prepared to concede, your Honor, that a metropolitan solution would not be viable or would be inappropriate.”⁶⁹

What Mr. Flannery had done here was suggest to Judge Roth the possibility that a metropolitan plan would be viable. While Judge Roth did not fully consider it at this point, the foundation for a metropolitan plan had been laid.

Judge Roth’s opinion in the initial case showed that he was coming around to this point of view as well. His use of numbers at the beginning of the opinion was meant to illustrate that Detroit was slowly becoming a black core surrounded by a white ring. “I think he felt, as a matter of what’s fair, it would have been unfair for him to say, ‘I am going to limit to within the city. I’m going to essentially giving a license to allow this system of segregation to go on around the metropolitan area,’” remembers Paul Dimond. “He wasn’t

⁶⁸ Bradley v. Milliken, Transcript of Proceedings had before Honorable Stephen J. Roth, April 13, 1971: 512, Personal Collections of John Runyan.

⁶⁹ Ibid, 517.

about to say ‘in 1972, at this point in time, I am going to say you can only desegregate the black core’.”⁷⁰

Once the proceedings on a desegregation plan began, Judge Roth made this view abundantly clear. On October 4, 1971, the first day of hearings about a remedy, he stated, “perhaps only a plan which embraces all or some of the greater Detroit metropolitan area can hope to succeed in giving our children the kind of education they are entitled to constitutionally.”⁷¹ Despite these misgivings, Judge Roth gave the school system opportunities to develop and present both Detroit-only and metropolitan plans.

Judge Roth held hearings on various Detroit-only desegregation plans over a period of months, but all failed to sway him from the central idea that these plans would not accomplish the desegregation that was constitutionally required. Therefore, on March 28, 1972, he ruled “relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographic limits of the city.”⁷² He held hearings after this on the viability of metropolitan plans, and finally issued a ruling on June 14, 1972 for a panel to be called which would be assigned the responsibility of formulating a desegregation plan involving Detroit and 53 outlying school districts, with “final desegregation to proceed in no event later than the fall 1973 term.”⁷³

Conclusion

Unlike A.L Zwerdling, Judge Stephen Roth was not a liberal who had dedicated his life to integration. In fact, at the outset of *Bradley v. Milliken*, some might even go so far as

⁷⁰ Dimond, Interview.

⁷¹ *Bradley v. Milliken*, Transcript of Proceedings had before the Honorable Stephen J. Roth, October 4, 1971: 4, Personal Collections of John Runyan.

⁷² *Bradley v. Milliken*, Findings of Fact and Conclusions of Law on Detroit-only Plans of Desegregation, March 28, 1972: 5, Personal Collections of John Runyan.

⁷³ *Bradley v. Milliken*, 345 F. Supp. 914, 917 (E.D. Mich. 1972).

to say that he was anti-integration because he believed the separation of the races was a matter of free choice. Yet, after months of trials and hearings, Judge Roth ordered that planning begin for a desegregation plan whose scope even Zwerdling would not have dreamt of.

What brought about this radical change? This chapter has been an attempt to answer that question. Through the analysis of transcripts of the trial and Judge Roth's various opinions, a portrait of the man begins to emerge. While he may not have been pro-integration at the outset of the trial, Judge Roth proved himself throughout the proceedings as a man who, above all else, was willing to listen. What he discovered, in both the housing and school evidence, was the perpetuation of an insidious segregation on all levels of government. Judge Roth found this segregation to be unconstitutional, and furthermore saw that it must be stopped now or soon it would become truly overwhelming. The state's existence as a party in this case gave Judge Roth the authority to involve the state in any remedy. When Judge Roth decided that meaningful segregation could not be accomplished within the city limits alone, he felt that this state involvement gave him both the authority and the duty to look beyond the city for a solution. He did this, and issued an order that planning for a metropolitan decision must begin.

While looking at Judge Roth's transformation has been the central focus of this chapter, another goal has been to frame the trial strategy that led to that transformation as part of a broader NAACP tactic. The NAACP, by presenting both housing and school segregation evidence, was trying to show Judge Roth that the line between *de facto* and *de jure* segregation was not as clear as it had been spelled out in the north. Rather, *de facto*

segregation was largely a myth, as various state and local organizations worked to segregate blacks in a manner that functioned not unlike Jim Crow laws in the South.

The effectiveness of this tactic is shown in Judge Roth's transformation. By allowing all the evidence to be presented before him, and examining it carefully, Judge Roth came to the exact conclusion that the NAACP hoped he would. De jure and de facto segregation were one and the same. As long as the higher courts upheld Judge Roth's decision, it would symbolize a momentous victory for the NAACP and change the shape of racial desegregation in the north.

CHAPTER THREE: The Final Failure of Integration

Introduction

The fall of 1972 found tensions running high in Detroit. Following Judge Roth's declaration that a metropolitan plan of desegregation must be formulated and implemented in the city, the entire area exploded in outrage. Judge Roth received death threats from angered whites, and the city seemed likely to erupt into a riot at any moment.

These tensions were also being felt at the highest levels of government. Governor Milliken issued numerous statements denouncing Judge Roth's opinion as both uncalled for and unconstitutional. While Milliken made sure to differentiate himself from southern governors who called for the resistance of court orders, he also made clear his disgust with Judge Roth's decision and his fervent hope that it would be reversed.

As Governor Milliken's hopes suggest, the avenue of resistance for those who hoped to overturn Judge Roth's decision was the appeals process. Almost as soon as the decision had been rendered, both suburban districts and the state itself filed appeals with the Sixth Circuit. This chapter will be concerned with examining those appeals and the ultimate results of the appeal process.

The first part of this chapter is concerned with the appeal in the Sixth Circuit. The Sixth Circuit was the body that had already been heavily involved in the early part of the case because of NAACP appeals of Judge Roth's initial refusal to grant an injunction and then his approval of the "magnet plan." Due to the rules of the Court, this case initially came before the same three judges—Harry Philips, George Edwards, and John Peck—who had heard the initial hearings in the case. This presented an interesting situation, because Judge Peck was the District Judge who had ruled in *Deal v. Cincinnati Board of Education* that housing had

no place in a school desegregation case. Here, the justices unanimously affirmed Judge Roth's ruling. While the opinion in this case attempted to make their ruling seem in accordance with *Deal*, looking at this opinion closely shows that, in fact, Judge Peck was essentially saying he was wrong in *Deal* and that housing policies were entirely relevant to a school case. Like Judge Roth, it appeared another justice had been converted by the direness of Detroit's situation.

Once these judges had affirmed Judge Roth's ruling, the state and the suburbs asked for, and were granted, an *en banc* hearing. An *en banc* hearing occurs when, in cases of great importance, the three judges assigned to a case determine that it needs to be heard before the entire Sixth Circuit. All nine judges heard the case, and they too affirmed Judge Roth's ruling by a six to three margin. Critical in this part of the chapter are the dissenting opinions of the three justices in the minority, as they both foreshadow the issues the Supreme Court would bring up as well as illustrate the fact that the majority's decision was a turn away from *Deal*.

The Supreme Court decision represented the last chance for desegregation of Detroit. The opinions of the justices in the majority are important to examine because they show a disregard for the facts of the case, and contempt and disdain for Judge Roth. The opinions in dissent, however, are important because they continue to illustrate that those who can get past the *de facto* and *de jure* distinction see Detroit's racial problem and understand that it must be solved now if the city is ever truly going to be integrated. In this vein, the prophetic words of Justice Thurgood Marshall ring particularly ominously.

Finally, this chapter briefly deals with the results of the Supreme Court decision. Detroit gets a desegregation plan that only serves to further segregate the metropolitan area, and each of the characters in the story is affected by the case in their own way.

While illustrating the “tipping point” nature of this decision is central to this chapter, the other theme that runs throughout is the national perspective. In the years that *Bradley v. Milliken* was working its way through the courts, the country as a whole was turning away from desegregation. President Nixon was pressuring Congress for an end to busing, and many were looking to the Supreme Court to resolve the issue of whether metropolitan busing was a constitutional solution. *Bradley v. Milliken* must also be understood in this light, and the decision in the Supreme Court, as well as the Court’s decision to take the case in the first place, must be looked at through the political lens of the time.

Public Reaction to Metropolitan Plan

The public reaction to Judge Roth’s decision was immediate and inflammatory. The pages of the *Detroit Free Press* in the days following the ruling blared with headlines such as “The Buses May Never Roll Despite Roth’s Decision”¹ and “Roth Order Angers Suburbs.”² These articles suggested the vehemence of the anger directed specifically towards Judge Roth, with quotes such as, “‘Roth’, said Mrs. Joan VanDeVeer, a mother of three school children from Grosse Pointe Park, ‘is a four letter word.’” These expressions of vehemence were followed by examples of concrete action, with parents in the Warren and Berkeley school districts formulating plans for large-scale private school system so that their children would not be bused, and the National Action Group (NAG) announcing a “12-point program” that was meant to include a nationwide strike and the withholding of property taxes.³

Most of the anger, however, was directed at Judge Roth personally. June 16, 1972, which was the Friday following the judge’s decision, saw a large protest outside of the

¹ William Grant, “The Buses May Never Roll Despite Roth’s Decision,” *Detroit Free Press*, June 15, 1972.

² “Roth Order Angers Suburbs,” *Detroit Free Press*, June 15, 1972.

³ “Busing Foes Map Plans to Resist Order,” *Detroit Free Press*, June 16, 1972.

Detroit federal building with signs such as “Judge Roth: Child Molester”.⁴ “It was vicious, absolutely vicious” recalls Paul Dimond, one of the counsel for the NAACP and a resident of the Detroit metropolitan area at this time. “He received death threats, there were bumper stickers that said ‘Pith on Roth’ and all kinds of things. It was incredible”.⁵

The anger present in Detroit over the issue of busing mimics what had increasingly become a national exasperation over the topic, and over civil rights in general. Whereas a majority of Americans had seen desegregation as the most important issue facing America throughout the 1960s, these numbers decreased significantly following the passage of the Civil Rights Act of 1964. “Between March 1965 and May 1966, the percentage of people convinced that civil rights was the nation’s most important problem plummeted from 52 to 9.”⁶ As Matthew Lassiter details in *The Silent Majority*, Richard Nixon ran his 1968 campaign for president largely on the idea of a return to law-and-order politics, and a retreat from the sweeping desegregation measures that had been enforced in many parts of the country. Nixon claimed he represented the “Silent Majority” of Americans, those who were tired of what they considered the riotousness of the 1960s. Nixon’s public statements throughout the country during the election reflected what was becoming the “emerging suburban blueprint on school desegregation—rhetorical support for the principle of integration combined with opposition to the methods necessary to overcome residential segregation.”⁷ By expressing this sentiment, Nixon appealed to a broad swath of suburban America, both north and south, who were eager to seem in favor of integration and escape the

⁴ John Collier, “Youthful Protest,” in *Detroit Free Press*, June 16, 1972.

⁵ Paul Dimond, interview by author, Ann Arbor, MI, February, 18, 2009.

⁶ Gary Orfield, *Must We Bus? Segregated Schools and National Policy* (Washington: The Brookings Institution, 1978), 110.

⁷ Matthew Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, NJ: Princeton University Press, 2006), 137.

label of being called racist, but who also had absolutely no desire for their sons or daughters to be bused in order to achieve this integration. Nixon told his supporters at the GOP national convention in 1968 that judges were unqualified to make local school decisions and that he wanted to give children “freedom of choice” to decide where they would go to school. He rode the wave of support that these views engendered to victory in 1968, winning despite receiving almost no black votes.⁸

Nixon used the platform of the presidency to attempt to stop busing as a policy. As busing proposals that had been ordered in Charlotte and other southern states worked their way through the legal appeals process, Nixon delivered a policy address on March 24, 1970. Nixon’s address claimed to reaffirm the administration’s support for the decision in *Brown*, but also “embraced an inviolable principle of neighborhood schools and declared mandatory racial busing to be a violation of constitutional standards. ‘There is a constitutional mandate that dual school systems and other forms of *de jure* segregation be eliminated totally,’ the president explained. But ‘*de facto* segregation, which exists in many [metropolitan] areas both North and South’ resulted from residential forces beyond the jurisdiction of the federal courts.”⁹

At the time of Judge Roth’s ruling, legislation supported by Nixon and designed to curtail busing was working its way through the legislative branch. Nixon had suggested to Congress, in March 1972, that they put a moratorium on school busing, but Congress had balked on his proposals and was instead contemplating less harsh measures against busing to be attached to the annual aid to education bill. These measures would halt for 18 months any busing order by the federal courts until all legal appeals had been exhausted, a far cry from

⁸ Orfield, 242.

⁹ Lassiter, 158.

Nixon's demand for a moratorium on school busing and the "drawing up of new uniform national desegregation standards for all districts, and the use of court-ordered busing to integrate schools only as a last resort."¹⁰ Despite Nixon's desire for stronger and more stringent measures, he signed the Congressional curbs into effect when the education bill came before him on June 23.

This legislation had no effect on Judge Roth's ruling, however, as the legislation applied only to orders requiring "racial balance", and not those that demanded desegregation to remedy unconstitutional segregation.¹¹ Therefore, the panel Judge Roth had called for, designed to formulate the best plan for metropolitan integration, could go on meeting.¹²

On Tuesday, June 20, 1972, 31 of the 52 suburban school districts Judge Roth had named in his desegregation order filed an appeal with the Sixth Circuit of the United States Court of Appeals. In their appeal, these districts did not dispute the segregation Judge Roth had found in the Detroit school system. Rather, they argued that he could not include the suburban school districts in his metropolitan plan because he did not find that the suburban school districts had acted to further segregation. As John B. Weaver, the attorney who filed the motion for the 31 school districts, put it, "he didn't find anything wrong with the suburban schools, and his remedies aren't accurate. They're too sweeping and broad for the violations he found."¹³

The Case Before the Sixth Circuit

The Sixth Circuit heard oral arguments on the case on August 24 1972. The argument was held before Chief Justice Harry Phillips, Justice George Edwards, and Justice John W.

¹⁰ "Angered Nixon Signs \$21 Billion School Bill," *Detroit Free Press*, June 24, 1972.

¹¹ Paul Dimond, *Beyond Busing: Inside the Challenge to Urban Segregation* (Ann Arbor: The University of Michigan Press, 1985), 87.

¹² "Nixon: Anti-Bus Bill No Help to Detroit," *Detroit Free Press*, June 16, 1972.

¹³ "31 Suburban School Districts Appeal Integration Order," *Detroit Free Press*, June 21, 1972.

Peck. Justices Peck's presence caused the NAACP significant worry, as he had been the District Judge who issued the ruling in *Deal v. Cincinnati Board of Education*. As the previous chapter noted, *Deal* had declared that evidence of housing discrimination had no place in a case concerning school segregation.¹⁴ Hence, Judge Peck was not the ideal judge for the NAACP to have to bring this case before.

The oral portion of the argument centered on two different lines of argument against Judge Roth's ruling. The lawyer for the suburbs argued that since Judge Roth's finding of intentional segregation only involved the Detroit school district, the remedy must also only involve the Detroit school district. At the same time, Attorney General Frank Kelley disputed the findings of segregation on the part of the state.¹⁵

Finally, in another interesting twist, the lawyer for the Detroit school board did not dispute the finding of segregation against the school board. Instead, he felt that a more profitable line of reasoning was to establish how important the state oversight of the district was and the state's critical role in the school board. This argument was designed to assure that the Court of Appeals would find state complicity in the segregation and rule that a metropolitan desegregation plan must occur. The school board realized that they would likely lose if they appealed the ruling of segregation on their part; instead, the school board felt that, because desegregation was inevitably going to occur in some form, it would be better served arguing for a metropolitan plan over a city-only plan. Part of this concern was undoubtedly tied to the school system's dwindling finances.¹⁶ In a metropolitan plan, the Detroit school board would not have to shoulder the burden of financing a desegregation plan alone.

¹⁴ *Deal v. Cincinnati Board of Education*, 369 F. 2d, 55 (6th Cir. 1966)

¹⁵ Dimond, 88.

¹⁶ For a more in-depth description of the financial shortfall the school system was experiencing, see Jeffrey Mirel, *The Rise and Fall of An Urban School System* (Ann Arbor: The University of Michigan Press, 1999).

Following the oral arguments, Chief Judge Phillips issued the opinion for the panel on December 8, 1972. The fact that the justices voted unanimously, and that there were no concurring opinions, suggest that they all agreed with everything Judge Phillips wrote. This is important in the case of Judge Peck in ways that will become obvious through continued analysis of the opinion.

The opinion first went into great detail laying out the judicial history of the case, and even cited copious amounts of transcripts from the trial in explaining how Judge Roth had arrived at his ruling. Justice Phillips first went through the constitutional violations Judge Roth had found the state and the School Board of Detroit guilty of committing. Following this statement of the evidence, he stated the panel's finding, which was that "the discriminatory practices on the part of the Detroit School Board and the State of Michigan revealed by this record are significant, pervasive, and casually related to the substantial amount of segregation found in the Detroit school system."¹⁷

While the affirmation of Judge Roth's findings is important, perhaps equally important is the explanation Justice Phillips gave for this ruling. The justice said that this case, being in the North, was different from many school desegregation cases that had come before it. This difference resulted from the fact that Michigan, unlike many Southern states, had not enforced segregation of schools by public law before 1954. Justice Phillips said he felt that the state officials thought this fact would insulate them, but that "this court is not blind to the fact that governments can act only through the conduct of their officials and that unconstitutional actions of individuals can be redressed."¹⁸ While the implicit point here is that northern segregation would not be tolerated, Justice Phillips continued to ensure that it

¹⁷ Appeal from the United States District Court for the Eastern District of Michigan, Southern Division, December 8, 1972: 49, Personal Collections of John Runyan.

¹⁸ *Ibid.*, 50.

was explicit, saying, “even if the segregation practices were a bit more subtle than the compulsory segregation statutes of Southern states, they were nonetheless effective. There should not be one law for the South and a different one for the North.”¹⁹

With this statement, Justice Phillips appeared to be blurring the distinction between *de facto* segregation and *de jure* segregation. What he had essentially said was that the northern claim that there were no explicit laws enforcing segregation was no longer an acceptable excuse for segregation existing. If it could be proven that government had acted in a matter that increased segregation, despite the law, then the government would have to undo segregation.

The court’s ruling from *Deal* was still applicable, however, and Justice Phillips and his fellow panel members were unwilling to overturn it. Therefore, Justice Phillips made specific reference to the fact that “the record contains a substantial volume of testimony concerning local and State action and policies which helped produce residential segregation in Detroit and in the metropolitan areas of Detroit”, but that “in affirming the District Judge’s findings of constitutional violations...we have not relied at all upon testimony pertaining to segregated housing.”²⁰ Housing discrimination had no place in a school case, and the Sixth Circuit was still unwilling to acknowledge that it should.

After affirming Judge Roth’s opinion that *de jure* acts of segregation were committed by the School Board and the state, Justice Phillips proceeded to examine Judge Roth’s finding that a Detroit-only plan would not accomplish desegregation, and that he therefore had the authority and the responsibility to order the formulation of a metropolitan plan. Justice Phillips asserted that Judge Roth had been confronted with an entirely new case from

¹⁹ Ibid.

²⁰ Ibid., 51.

those before it, a case where “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.”²¹ Faced with this prospect, Justice Phillips and the panel had to agree with Judge Roth that it did not make sense “that the constitutional right to equality before the law is hemmed in by the boundaries of a school district.”²² Justice Phillips went further than even Judge Roth had gone, however, intimating that allowing an all black school district to develop in this manner would constitute a return to the “separate but equal” doctrine of *Plessey v. Ferguson*, and thus a repudiation of *Brown v. Board of Education*. Furthermore, Justice Phillips noted that the fact that the state had been shown to commit acts of *de jure* segregation made it all the more clear that Judge Roth had the authority to disregard school boundaries in devising a solution.

It was in accepting Judge Roth’s finding that the suburbs must be involved in desegregation that the judges showed, regardless of their writings to the contrary, their repudiation of deal. The opinion said that Judge Roth must take into account the fact 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”²³ when formulating a desegregation plan. It is not clear how Judge Roth could take this into account without analyzing housing policies and demographics. The judges went even further than that, however, in asserting that judge Roth had the authority to disregard such “artificial barriers” as school district lines.²⁴ In affirming Judge Peck in *Deal*, the Sixth Circuit had stated the opinion that, if neighborhood schools were operated fairly but happened to result in

²¹ *Ibid.*, 56.

²² *Ibid.*, 57.

²³ *Ibid.*, 56.

²⁴ *Ibid.*, 65.

segregation, the state had no duty to undo the segregation.²⁵ Involving the suburbs, who no one claimed had committed acts of *de jure* segregation, in a plan to remedy the segregation of the Detroit school system seems a direct contradiction of that previous holding.

The panel did not, however, fully uphold all of Judge Roth's rulings. The opinion made it explicit that it did not take a position one way or the other in regards to the desegregation area that Judge Roth himself had set out. They said that while Judge Roth could fashion a metropolitan remedy, the school districts that were going to be affected needed to be included in the case and given a chance to air their views. In a clear distinction from what was to come in the Supreme Court, however, the panel ruled that "in fashioning an equitable remedy in this case, it will not be necessary for the District Court to find discriminatory conduct on the part of each school district, either *de jure* or *de facto*, as a prerequisite to including such district in a desegregation area."²⁶

Public reaction to this decision was remarkably muted. While attorneys from both sides offered predictable reactions, with the NAACP praising the panel's thought process while the school board and the suburbs admonished it, the pages of the *Free Press* and the *Detroit News* were not filled with stories of protests at schools or any of the more violent reactions that had been seen at various times throughout the case. This lack of visible reaction did not result, however, from the population of the city suddenly accepting the concept of busing. Rather, as the column entitled "Ruling Means High Court Can't Avoid Busing Issue", which appeared on the front page of the *Free Press* the day after the decision, suggests, everyone fully believed that the Supreme Court would now become involved in

²⁵ Deal v. Cincinnati Board of Education, 369 F.2d 55, 60 (6th Cir. 1966).

²⁶ *Ibid.*, 68.

Detroit's busing problem.²⁷ The idea that people were now waiting for a final decision before reacting is further backed up by the pages of the *Michigan Chronicle*, Detroit's leading weekly black newspaper, which were free of any mention of the court's decision.

The Hearing en banc

Before the case could proceed to the Supreme Court, however, it had to fully work its way through the Sixth Circuit. The attorneys for the Detroit suburbs and the state of Michigan asked for a rehearing *en banc*. This meant that the case was heard before the entire nine-member panel of the Sixth Circuit instead of simply the three-member panel that had heard it before, and that the decision of the three-member panel that had been handed down on December 8 was voided. The oral arguments took place before the entire nine-judge panel on February 8, 1973, with a decision rendered on June 12, 1973.

The majority opinion, again authored by Chief Justice Harry Phillips, was essentially the same as the one that he had delivered on December 8, 1972. Unlike in the panel decision, however, there was not only one opinion because Judge Phillips did not write for a unanimous majority. Instead, the Sixth Circuit split 6-3. While the similarities between the majority opinion here and the one presented on December 8 would make analyzing the majority opinion an exercise in reiteration, the opinion of those Sixth Circuit justices who chose to dissent are certainly worth closer examination. This is necessary both to note that the assert that the majority's opinion is a direct contradiction of *Deal*, and to show how they compare with the majority Supreme Court decision that followed.

The first Judge to dissent was Paul Weick. Weick's dissent is important both because he had authored the Sixth Circuit decision that affirmed Judge Phillip's in *Deal*, and because

²⁷ William Grant, "Ruling Means High Court Can't Avoid Busing Issue," *Detroit Free Press*, December 9, 1972.

his decision mirrors what would become central arguments in the Supreme Court. Weick asserted that Judge Roth could not include any districts in his plan that he could not prove had committed *de jure* acts of segregation by themselves or had been drawn with segregation in mind. Weick also brought up the clear conflict between the court's decision here and its decision in *Deal*, asserting that the court was now saying that acts that were constitutional in Ohio were unconstitutional in Michigan. Weick here was referring to the fact that, by involving the suburban districts, the majority was saying that neighborhood schools that operated without *de jure* segregation, but still resulted in segregation, were unconstitutional. In *Deal*, the court had rejected this argument. Finally, Weick asserted that Judge Roth was fundamentally incorrect in his assertion that relief for the desegregation could not be found in Detroit. Weick believed Judge Roth had based this ruling on population projections that were "wholly speculative".²⁸ Even if Detroit was majority black, Roth could still order a desegregation plan that would make the ratios in the schools within the city equal. Saying that this was not enough, and that it was instead his duty to try to achieve black and white equality as nearly as was possible, was to create a remedy too great for the problem he encountered.²⁹

Justice William Kent's dissent was principally concerned with this question of whether or not the remedy was too great for the violation. He agreed with the majority that the record clearly showed that the Detroit School Board had committed acts of *de jure* segregation. But, like Justice Weick, he felt that evidence must be shown that each School Board who was to participate in the remedy had participated in the violation. Therefore, Justice Kent's recommendation would have been for the case to be returned to Judge Roth

²⁸ Bradley v. Milliken, 484 F.2d 215, 264 (6th Cir. 1973).

²⁹ Ibid.

and for him to include all the suburbs who would be affected in the proceedings and that a violation must be shown for each.³⁰

Justice William Miller issued the final dissenting opinion. His opinion, in comparison to those of his associate justices in the minority, is relatively brief. All Justice Miller asserts is that it is unfair to the metropolitan school districts that they only be heard when the issue is of how to fashion a metropolitan remedy. He asserts they have a right to have their voices involved in “the issues of segregation, a ‘Detroit only’ plan, and the propriety of a metropolitan remedy.”³¹ Furthermore, Justice Miller asserts that, if any of those three issues were resolved in favor of an outlying school district, then a remedy affecting that district would not be fair. Essentially, all Justice Miller is arguing is that the case is not far along enough for the appeals court to decide anything, and that Judge Roth must go back and give the suburbs a voice in every part of the case.³²

These dissenting voices are critical to examine because they bring up issues that, for the most part, had not yet been raised in the trial. While the December 8 decision had asserted that the suburbs must be part of the fashioning of a metropolitan remedy, no justice in this case had asserted that each district included in a metropolitan plan must be shown to have been involved in desegregation. To the contrary, Justice Phillips’s opinions on both December 8 and June 12 had asserted that district lines were all creations of the state and had no real meaning, and that proving the state was part of the segregation gave Judge Roth the authority to fashion a plan that involved any districts he chose. Furthermore, these opinions were also the first in the trial to raise the idea that there was nothing wrong with a black city surrounded by white suburbs, or at least nothing a court had the right to remedy through

³⁰ Ibid., 283.

³¹ Ibid., 284.

³² Ibid.

school desegregation legislation. The dissenting justices in this case went back to *Deal* to assert that no one could ever really know the reasons for residential segregation, and that it was not the court's province to seek to undo it through school desegregation. Ultimately, these became issues and opinions that a majority of the Supreme Court would adopt.

The Case Before the Supreme Court

Before proceeding to examine the case before the Supreme Court and the opinions reached by that body, an examination of the Court during this period is necessary. As discussed earlier, the rise of Richard Nixon to the presidency in 1968 had been brought about by Nixon's appeal to law-and-order voters who had grown tired of the cultural upheaval of the 1960s and had grown increasingly conservative. For Nixon and his conservative cohort, the cultural upheaval they were seeking to end was embodied most clearly in the Supreme Court. Since being appointed by Dwight D. Eisenhower in 1953, Chief Justice Earl Warren had led the court, and the "Warren Court" had become known as one of the most far-reaching, liberal Courts in Supreme Court history. It had begun school desegregation with *Brown v. Board of Education* (1954), made the unanimous declaration that states could not choose to ignore the Court's opinions in *Cooper v. Aaron* (1958), and asserted that states must provide attorneys for defendants unable to afford them with *Gideon v. Wainwright* (1963). The Court redefined and increased the power of the judicial branch, and was no doubt exactly who Nixon was thinking of when he railed against "activist judges."³³

When Nixon was elected, Warren was 67. He had announced his retirement from the Court in 1968, contingent on the appointment of his successor. Lyndon Johnson had attempted to appoint Associate Justice Abe Fortas to the position of Chief Justice, but had

³³ Leon E. Panetta and Peter Gall, *Bring Us Together: The Nixon Team and the Civil Rights Retreat* (Philadelphia: J.B. Lippincott, 1971), 203.

been blocked by a Senate filibuster. With Johnson's term having run out, Nixon now got the chance to appoint a Chief Justice to replace Warren.³⁴

For this task, Nixon appointed Warren Burger, a justice on the U.S. Court of Appeals for the District of Columbia Circuit. Burger, like Nixon, was known as a strict-constructionist in his reading of the Constitution. What this meant was that Burger placed a firm limit on the power of the judiciary and strong restrictions on judicial interpretation, putting him in conflict with the Warren Court and the activist leanings of some of its members. Nixon had promised to appoint a strict-constructionist to the court throughout his campaign, and Burger was a perfect candidate.³⁵

Many therefore thought the Burger Court would be remarkably different from the Warren Court. Nixon hoped that the Burger Court would finally do away with the practice of busing, but instead the court issued a unanimous ruling in *Swann v. Charlotte-Mecklenburg Board of Education* (1971) that school busing was acceptable to reduce *de facto* racial segregation in schools. *Swann* (1971) would become important as *Bradley v. Milliken* proceeded to the Supreme Court primarily because of the language the Court used in its ruling, which was that a federal remedy to segregation “may be exercised ‘only on the basis of a constitutional violation’” and that “[a]s with any equity case, the nature of the violation determines the scope of the remedy’.”³⁶

Around the time *Bradley v. Milliken* was working its way through the Sixth Circuit, the Supreme Court was dealing with another metropolitan integration plan. In *Bradley v. Richmond School Board*, a District judge in Richmond had ordered a metropolitan

³⁴ James B. O'Hara, "Introduction" in *The Burger Court*, ed. Bernard Schwartz (New York: Oxford University Press), 3.

³⁵ *Ibid.*

³⁶ *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16 (1971).

desegregation plan only to be overturned by the Fourth Circuit on appeal. This case, unlike *Bradley v. Milliken*, was at a point in 1973 where the District Judge had actually ordered the combination of Richmond schools, which were 70 percent black, and those of Henrico and Chesterfield counties, which were 90 percent white. Therefore, this case was one where a final remedy had actually been ordered, and the Supreme Court agreed to review it on January 15, 1973.³⁷

The problem with the *Bradley v. Richmond* case was that one of the Justices of the Supreme Court, Justice Lewis F. Powell Jr., had to recuse himself from the case because he was a member of the Richmond School Board from 1961 to 1969. Justice Powell's recusal led the Court, when they heard the case in May 1973, to deadlock in a 4-4 vote and be unable to release an opinion. A deadlocked court meant that the Fourth Circuit ruling stood for Richmond, and there could be no metropolitan plan. The court's inability to render an opinion, however, meant that the Richmond case set no precedent for other metropolitan plans.

The Court wanted to issue a ruling on metropolitan busing plans once and for all, and was under considerable pressure politically to do so. Into this vacuum stepped *Bradley v. Milliken*, with the decision from the Sixth Circuit's *en banc* hearing being released the month after the Court's deadlock. While *Bradley v. Milliken* presented no final ruling, and thus was not the type of case the Supreme Court generally ruled on (or, according to Judge Miller of the Sixth Circuit, the kind of case even the Sixth Circuit should rule on), the Court agreed on November 19, 1973 to hear arguments in the case. According to Paul Dimond, this decision reflected the Court's desire to make a determination on metropolitan busing once and for all. "What was interesting to me," Dimond says, "was that it went to the Supreme Court even

³⁷"High Court to Eye Metro School Plan," *Detroit Free Press* January 16, 1973.

though they won't usually take matters unless it's a final order. And you had the interesting situation here that what was up on appeal had nothing to do with remedy, and they decided on the remedy. That just goes to show you how they went out of their way to decide this political controversy in the country about 'busing'."³⁸

Oral arguments were heard before the Supreme Court on February 27, 1974 and a decision was rendered on July 25, 1974. This decision, a contested 5-4 verdict, overturned the District Court and the Sixth Circuit Court of Appeals and ruled that a federal court

“may not impose a multidistrict, area-wide remedy for single-district de jure school segregation violations where there is no finding that the other included school districts have failed to operate unitary school systems or have committed acts that effected segregation within the other districts, there is no claim or finding that the school district boundary lines were established with the purpose of fostering racial segregation, and there is no 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 violation by those districts.”³⁹

To understand this decision better, some analysis of the opinions rendered by the individual justices is required. In this case, two justices filed opinions for the majority, with three filing opinions for the minority. Chief Justice Burger delivered the opinion of the court. Burger's opinion, after stating the legislative history of the case, proceeded first from the *Swann* precedent that the “nature of the violation determines the scope of the remedy.”⁴⁰ Here, Burger showed that the complaint before Judge Roth had always been how to desegregate Detroit schools. Burger's belief, however, was that Judge Roth and the Sixth Circuit “shifted the primary focus from a Detroit remedy to the metropolitan remedy because of their conclusion that total desegregation of Detroit would not produce the racial balance which they

³⁸ Dimond, interview.

³⁹ *Milliken v. Bradley*, 418 U.S. 717, 718 (1974).

⁴⁰ *Swann v. Charlotte-Mecklenburg Board of Education*, 16.

perceived as desirable.”⁴¹ Burger suggested that this was an entirely arbitrary quota, and that Judge Roth’s treatment of school district lines as simply administrative boundaries that could be altered was false. Instead, Burger suggested that local control of school districts meant that an inter-district remedy could exist 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...Conversely, without an inter-district violation and inter-district effect, there is no constitutional wrong calling for an inter-district remedy.”⁴² Burger also attacked the administrative feasibility of a metropolitan plan, suggesting that it would be very hard to have school governance over such an area. Furthermore, Burger rejected the argument that acts of the State gave Judge Roth the authority for an inter-district remedy because, again, he found that the acts of the State only perpetuated the segregation found within Detroit.

Burger’s opinion is important for many reasons. First, he adopts Judge Weick’s tone of being hypercritical of many of Judge Roth’s decisions. In painting Judge Roth as a radical who strove to create an arbitrary quota in all the metropolitan schools, Justice Burger neglects the fact that no metropolitan plan had been decided upon, and therefore the quotas of the schools to be created, or the existence of quotas whatsoever, cannot be known. Burger’s portrait of Judge Roth here also neglects the voluminous case history presented in chapter 2 that shows that, far from a radical, Judge Roth was a pragmatic man who saw a tremendous problem and tried to solve it in a way he believed he was constitutionally mandated to do. The fact that the Sixth

⁴¹ Ibid., 740.

⁴² Ibid., 745.

Circuit affirmed this mandate would tend to suggest that, if Judge Roth was a radical, there happened to be six other radicals on the Sixth Circuit who shared his viewpoint.

Second, and related, Burger's attack of the administrative feasibility of a metropolitan plan is, like his attack of quotas, pure conjecture. No metropolitan plan had yet been decided upon and therefore there was no administrative structure to attack. Burger appears to desire to attack a metropolitan plan, and therefore chooses to do so here despite the fact that no plan yet existed.

Furthermore, a reading of the footnotes Burger included in his opinion make clear his failure to comprehend Judge Roth's ruling. One footnote deals with the presence of housing violations that was central to the case before Judge Roth. Burger asserts, however, that the Court of Appeals refusal to consider these proofs due to *Deal* means that the Supreme Court does not have to look at them. Following Burger's belief in the overarching importance of the "neighborhood school" system, it seems hypocritical to assert that evidence of housing discrimination, which directly impacts which neighborhoods people reside in, is unrelated to school discrimination.

Whereas Justice Burger indicates that housing discrimination need not be considered, Justice Potter Stewart, in his concurring opinion, fails to note that there was any example of housing discrimination at all. Justice Stewart says that an inter-district remedy was not called for in this case, but that an inter-district remedy would be appropriate if "state officials had contributed to the separation of the races by the drawing or redrawing of school lines...or by purposeful, racially discriminative use of state housing or zoning laws."⁴³ An example of this would appear to be, for example, state courts upholding racially restrictive covenants, one of the exact pieces of

⁴³ Ibid., 755.

evidence shown to Judge Roth. Stewart goes on to assert that “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.”⁴⁴ Stewart fails to note that much of the evidence put before Judge Roth was for the explicit purpose of showing that these “unknowable” factors were, in fact, relatively easy to discern and constituted segregation on the part of state and local officials.

Justice William Douglas voiced the first dissent in this case. Justice Douglas’s dissent was brief, and simply said that the state had been shown to involve itself in discriminatory actions by the District Court. Therefore, the State had to fix it, and a metropolitan plan should be the answer. Justice Douglas’s dissent, however, is much like that of Justice Miller of the Sixth Circuit, only from the other side, because his essential argument is that there is no final order yet, and therefore the court should allow the case to run its course before it decides one way or another.

The dissenting opinions of Justices Byron White and Justice Thurgood Marshall were significantly longer. Justice White’s dissent is concerned mostly with the idea that the District Judge could not consider suburbs outside of the city. Justice White finds this idea absurd, as it appears that the Court is making an entirely arbitrary rule that “violations occurring in a single Michigan school district must stop at the school district line.”⁴⁵ Justice White questioned how the State can have committed acts of segregation, and yet the remedy for that segregation has to be

⁴⁴ Ibid., 757.

⁴⁵ Ibid., 768.

confined in districts over which the state “itself has plenary power.”⁴⁶ Furthermore, Justice White attacks Justice Burger’s assertion that a metropolitan plan would be hard to administer for the simple fact that no metropolitan plan had yet been decided upon, and therefore Justice Burger was attacking a plan that did not yet exist.

Justice Marshall’s opinion reads more as a defense of the actions of Judge Roth and an attack on what he perceives are the purely political motivations of his fellow court members. Justice Marshall asserts that

“contrary to the suggestions in the Court’s opinion, the basis for affording a desegregation remedy in this case was not some perceived racial imbalance either between schools within a single school district or between independent school districts...the constitutional violation found here was not some *de facto* racial imbalance, but rather the purposeful, intentional massive, *de jure* segregation of the Detroit city schools.”⁴⁷

Justice Marshall goes on to assert that State involvement means this remedy can involve other districts if necessary. Justice Marshall also cites the court’s decision in *Wright v. Council of City of Emporia*, where the court had said that Judges could take white flight into account in assuring that a remedy did not serve to perpetuate or reestablish segregation, a condition Judge Roth clearly considered in ordering a metropolitan remedy.⁴⁸

Perhaps most interesting, however, is Justice Marshall’s attack on the Court’s questions of the viability of a metropolitan plan. Justice Marshall, like Justice White, asserts that considering the viability is pointless when no metropolitan plan is before the Court. He asserts that some disruption is inevitable in any desegregation ruling, but must be accepted to right the wrong. In the end, he asserts that this attack on

⁴⁶ Ibid., 772.

⁴⁷ Ibid., 785.

⁴⁸ Ibid., 801.

metropolitan plans by his fellows justices is nothing more than an acknowledgement of the politics of their decision, ending his dissent by saying,

“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 a product of neutral principle of law. In the short run, it may seem 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 regret. I dissent.”⁴⁹

Public Reaction and Repercussions of the Decision

The Public reaction to the Supreme Court’s decision depended entirely on which side of the issue a person fell on. For white liberals and the NAACP, the ruling was a significant blow. For suburban whites, it was a relief to know that their children would not be sent to the “ghetto” for school.⁵⁰ And, for Coleman Young, who had risen by 1974 to become Detroit’s first mayor, it was an expected ruling that masked the real problems. “I shed no tears for cross-district bussing...the basic issue, which still remains in spite of the court’s decision, is the problem of an unequal education opportunity for various children across the state.”⁵¹

In the sense of litigation, the Supreme Court’s decision meant that the case was remanded to the District Court for a Detroit-only desegregation plan to be put in place. There, it would have to be taken up by a new judge, for Judge Roth had died two weeks before the decision.⁵² While Judge Roth had heart problems before, Paul Dimond believes that the excessive public abuse he received following his decision exacerbated them and led to his death.⁵³ The case was placed before Judge Robert

⁴⁹ Ibid., 814-815.

⁵⁰ “Most Pleased with Busing Veto” *Detroit Free Press*, July 26, 1974.

⁵¹ Nadine Brown, “U.S. Court Verdict Not Surprising,” *Detroit Free Press*, August 3, 1974.

⁵² “Next Step: Busing Plan For Detroit” *Detroit Free Press*, July 26, 1974.

⁵³ Dimond, interview.

DeMascio. After many years of litigation, Judge DeMascio ordered a busing plan that began in 1976. The plan's failing, however, was that there simply were not enough white children to desegregate the schools. Between 1971 and 1976, when busing seemed imminent, Detroit had lost more than 51,000 white students. The number of white students in the city had declined from 153,046 in 1961, to 100,717 in 1970, to 26,320 in 1980. By 1984, the city would have fewer than 19,000 white students, constituting slightly less than 10 percent of the total student population.⁵⁴ White flight to the suburbs would not have mattered with a metropolitan plan, but it effectively doomed a Detroit-only one.

Nationally, the effects of *Bradley v. Milliken* were an important topic for civil rights organizations following the case's conclusion. The United States Commission on Civil Rights held a conference on November 9 to analyze these effects from a variety of perspectives. Essentially, all the conference concluded was that the case limited the scope of *Brown* and the Fourteenth Amendment in a way that had not occurred before, and thus was a significant setback for desegregation.⁵⁵ As both Mark Whitman's The Irony of Desegregation Law 1955-1995: Essays and Documents and Gary Orfield's Must We Bus? capture, those interested in desegregation did see potential in Justice Stewart's contention that an inter-district remedy would be justified if it could be shown that the state had practiced racially restrictive zoning laws, but this was about the only positive anyone could glean from the decision.

Conclusion

⁵⁴ Jeffrey Mirel, *The Rise and Fall of an Urban School System: Detroit 1907-81* (Ann Arbor: The University of Michigan Press, 1999), 359.

⁵⁵ United State Commission on Civil Rights, *Milliken v. Bradley: The Implications for Metropolitan Desegregation* (Washington: U.S. Government Printing Office, 1974).

This chapter charts the desegregation battle from its high point for integrationists, following Judge Roth's ruling, to the lows encountered after the Supreme Court ruled against the planning order for metropolitan desegregation. In doing this, it seeks to illuminate the conversions within the Sixth Circuit, the failures of understanding by some on the Supreme Court, and all too prophetic words of other Supreme Court Justices.

The chapter begins with the Sixth Circuit. Here, the effort is to show how the facts in *Bradley v. Milliken* caused the members of this body, particularly Judge Peck, to reverse their own decision in *Deal*. The opinions in this case show that the harsh realities of Detroit's situation, as well as the evidence presented in *Bradley v. Milliken*, made these judges reconsider the separation between *de facto* and *de jure* segregation that they had always clung to. The dissents in this case further demonstrate that this decision went against what the Court had decreed in *Deal*, and also bring into the case arguments that members of the majority in the Supreme Court would seize on.

The section of this chapter dealing with the Supreme Court serves two purposes. First, the opinions of the Justice's in the majority show their decision to not fully consider all of the evidence presented before Judge Roth. It appears that their decision to take the case in the first place, as well as to rule against metropolitan desegregation, was as much about political motives as it was about any true concern for the law or consideration of the evidence presented to them.

The opinions of the judges in dissent, in contrast, show that they understood the ramifications of this decision all too clearly. They had considered the evidence,

and Thurgood Marshall's dissent in particular highlights that they knew what the majority decision would lead to. Like Judge Roth and the Sixth Circuit before them, they acknowledged the tipping point in history. Unlike their lower court counterparts, however, these justices were unable to do anything to try to remedy the situation they saw fast approaching.

Throughout this chapter, attention is also paid to the national events occurring as a backdrop to this legal battle. The national pullback from desegregation was in full swing while *Bradley v. Milliken* was ongoing, and the politics of the time may have played a role in the Supreme Court's ultimate decision. Thus, this chapter represents the final failure of the desegregation attempted by Zwerdling, increased by Roth, and affirmed by the Sixth Circuit. Segregation was to become a reality in Detroit, and this was the true failure of idealism.

CONCLUSION

Bradley v. Milliken, the case with the potential to undo Detroit's segregation, ended in a whimper. Where once it had the potential to undo decades of Detroit's segregation, by the 1980s it had simply left a school system that was more bankrupt and probably less integrated than it found it. As Jeffrey Mirel writes in *The Rise and Fall of an Urban School System*, all the experience with busing had done was leave most citizens more disenchanted than before.¹

But what if it had succeeded? What if Judge Roth's metropolitan plan had been put into effect? James T. Patterson speculates on this possibility in *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy*. He believes that a metropolitan plan would have engendered so much violence and racial hostility that it would have been more trouble than it was worth.

While Patterson's speculation may be right, Detroit's current situation does not provide him with much legitimacy. The title of "America's Most Segregated City" is not one that many places are fighting to take away. Detroit finds itself currently as a black core surrounded by white suburbs. While metropolitan busing may have initially sparked widespread hostility, it is not as though the lack of metropolitan busing has made Detroit a beacon of peace and nonviolence. No one can ever know what would have happened with a metropolitan plan, but anyone can see what happened without one.

The tragedy of this situation, and the central point of this thesis, is that plenty of people saw this condition unfolding. In chapter one, Zwerdling and the liberal school board saw that Detroit was quickly becoming a radically segregated city, and tried to do whatever they could to halt or at least slow that segregation. Even as he was advocating a

¹ Jeffrey Mirel, *The Rise and Fall of an Urban School System: Detroit, 1907-81* (Ann Arbor: The University of Michigan Press, 1999), 259.

desegregation plan for the city, Zwerdling grasped that a Detroit-only plan of desegregation would not suffice. The vehement hostility to busing in many quarters of the white community, in fact, may have meant that Zwerdling's plan, if implemented, would have led to more segregation. Still, trying something was better than watching as segregation slowly enveloped Detroit, and Zwerdling and his liberal allies on the school board determined to do what they could to stop Detroit's segregation.

In chapter two, it was District Judge Stephen Roth who grasped the situation unfolding in Detroit. Unlike Zwerdling, Roth was not a committed integrationist, but rather a pragmatic man with a fundamental understanding of fairness. As the NAACP's case showed him the situation in Detroit, Roth began to see that Detroit was a city whose segregation, both in housing and schools, was the result of the actions of public officials at all levels. Roth understood this segregation to be both fundamentally unfair as well as unconstitutional, and saw it as his constitutional duty to remedy it. The fact that a Detroit-only desegregation plan would likely only increase the segregation of the city seemed to him to not be fulfilling his duty, and he therefore looked outside the city for his solution.

In chapter three, the characters with the foresight to see what was happening in Detroit were a majority on the Sixth Circuit and, tragically, a minority on the Supreme Court. On the Sixth Circuit, particular attention must be paid to Judge Peck as he had earlier ruled that evidence of housing segregation had no place in a case about school desegregation. Faced with new evidence in Detroit, however, Peck voted with the majority who saw it as the District Court's duty to remedy Detroit's segregation. On the Supreme Court, the justices in dissent saw the tragic consequences of the decision rendered by those in the majority.

Thurgood Marshall, in particular, saw that two cities, one black and one white, would soon emerge in many urban centers throughout America.

Also central to this thesis, and running throughout all of these chapters, are the national circumstances that provided a backdrop to this drama in Detroit. In chapter one, the debate between black integrationists and community control advocates over the best means to achieve equality was a constant theme in the busing discussion. In chapter two, the NAACP's goal of winning a decision in the north that blurred the distinction between *de facto* and *de jure* segregation helps to explain why the organization argued the case before Judge Roth in the manner that they did. And, in chapter three, the Supreme Court's decision cannot be separated from the national pull-back from desegregation legislation.

Detroit had an opportunity to try to halt segregation, and it was an opportunity that many people at the time saw and tried to seize. Their efforts are the story of this thesis, and their ultimate failure can be seen today in Detroit, America's Most Segregated City.

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