The Court Legacy

The Historical Society for the United States District Court for the Eastern District of Michigan ©2008

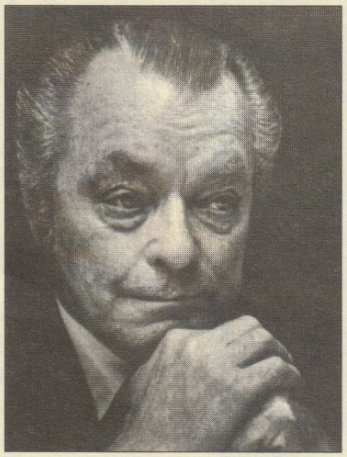
Vol. XV, No. 2
May 2008

"The Only Feasible Desegregation Plan"

Milliken v. Bradley and Judge Roth's Order for Cross-District Busing

©Jennifer A. Huff

This the first article in a four-part series on **Bradley v. Milliken**, *the Detroit school busing case. Written by an historian, it examines the historical background of the case from 1969 to 1972. The next article will be written by Detroit lawyer and past FBA President John R. Runyan, Jr., who was law clerk to Judge Stephen J. Roth from 1972 until Judge Roth's death in July, 1974, just prior to the Supreme Court's first decision. The third article will treat the period between the Supreme Court's first decision in 1974 and its second decision in 1977, during which time it was under the supervision of the late Judge Robert E. DeMascio. The fourth article will deal with the efforts by the District Court to bring the litigation to a close in compliance with the Supreme Court's 1977 decision.*



U.S. District Judge Stephen J. Roth, who presided over *Bradley v. Milliken* from the date the complaint was filed on August 18, 1970 until his death in July 1974.

On Sunday, July 23, 1967, the Detroit erupted in the worst urban riot of the 1960s. A police raid on a "blind pig" at 12th and Clairmount Streets in Detroit's black community triggered the uprising. The riot lasted nearly a week, destroying upwards of $32 million of property. Both the National Guard and the United States Army were called in to quell the violence. In the end, 43 men and women (33 black and 10 white) lay dead. More than one thousand people were injured, and 1,200 jobs were lost as a direct result of the rioting. When the riot finally ended, Detroit Mayor Jerome Cavanagh compared the city to "Berlin in 1945."[1]

Eight months after the violence dissipated, a London, Ontario, newspaper called Detroit "a sick city where fear, rumor, race prejudice and gun-buying have stretched black and white nerves to the verge of snapping."[2] Detroit had a long history of racial segregation and inequality. Its problems did not begin in 1967, but by the mid to late 1960s, racial tension in Motown was palpable.

Less than three years after the riot, in April 1970, the Detroit Board of Education (the Board) proposed a plan to partially desegregate the Detroit Public Schools. The Board's proposal was met with widespread opposition from white parents and legislators. After the Michigan Legislature overturned the desegregation plan, the National Association for the Advancement of Colored People (NAACP) took the State to the United States District Court. Thus began a four-year judicial battle known as *Milliken v. Bradley*. As the case worked its way through the courts, its focus shifted from the original desegregation proposal to an even more controversial scheme for urban-suburban busing. *Milliken* culminated in 1974 when the United States Supreme Court, led by Chief Justice Warren Burger, ruled against the NAACP in a five-to-four decision, finding inter-district busing "a wholly impermissible remedy" to single-district segregation.[3] This article, the first in a four-part series, puts *Milliken* in a broader historical context and examines the case from its origins at the local level through the District Court's 1972 ruling in favor of cross-district busing.

Detroit's Racial Problem: The Color Line, White Flight, and School Segregation

Inter-district busing was designed to resolve a problem with roots as far back as the 1910s and 1920s. In the years during and after World War I,

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John P. Mayer, Editor

Published periodically by The Historical Society for the United States District Court for the Eastern District of Michigan, Office of the Clerk, Theodore Levin United States Courthouse, Detroit, MI 48226-2797.

Subscriptions available through any Society membership. Membership benefits include the Newsletter, voting privileges, and the Annual Meeting. The Historical Society has extended the benefits of membership to members of the Eastern District of Michigan Chapter of the Federal Bar Association.

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thousands of Southern blacks migrated to Detroit, seeking high-paying factory jobs in the rapidly expanding industrial city. In 1910, Detroit's 5,741 blacks accounted for a mere 1.2 percent of the total population. Over the next two decades, the African American population burgeoned so that by 1930 there were 120,066 African Americans in Detroit, 7.7 percent of the total population.[4]

As African Americans poured into the Motor City, white racism intensified. Most white Detroiters had always considered blacks an inferior race, but when blacks were few in number, they seemed to pose little threat. In the late nineteenth and early twentieth centuries, blacks and whites often lived side by side. However, as the African American population exploded during the Great Migration, whites grew uneasy and began to devise ways to keep blacks out of their neighborhoods. By the mid-1920s, the lines were drawn, and residential segregation ruled Detroit.[5]

Detroit's African American population continued to grow into the post-World War II era. By 1960, Detroit was home to almost half a million blacks, 28.9 percent of the city's total population. Over the next ten years, the black population grew by almost 180,000, but non-black residents left the city at a much faster rate. Between 1960 and 1970, the non-black population dropped by over 330,000. In the aftermath of the riot, white flight accelerated. In 1967, 47,000 whites left Detroit. The following year brought an exodus of 80,000 more people. They moved to white neighborhoods in suburbs like Dearborn, Grosse Pointe, Warren, and Livonia – far away from 12th and Clairmount – leaving behind Detroit's African Americans, most of whom could not escape the impoverished city. Thus, Detroit grew increasingly black. By 1970, African Americans made up 44.5 percent of Detroit residents.[6]

After the riot, segregation blended with a profound fear in white neighborhoods in both the city and the suburbs. White Detroiters and suburbanites worried that the violence might spread to their own neighborhoods. At least two local suburbs – Highland Park and Pontiac – experienced their own racial uprisings at the same time as Detroit. Tensions remained high long after the rioters left the streets and the last fires burned out. Historian Sidney Fine describes the racial climate as follows:

In the white community it was rumored that blacks would set fire to the expressways by rolling gas drums down the roads or they would mine or block the expressways and shoot whites in their cars. It was also rumored that blacks would shut off the city's water supply and its public utility service.

In the suburbs there was talk of black "killer squads" that would come from the inner city to murder children and of black maids dispatched to suburban communities to poison the residents of the households where they served.

Fear permeated black neighborhoods, too. According to Fine, "Blacks heard rumors that whites would try to provoke a race war and then would invade the inner city to murder blacks, that the police were training suburban whites to shoot, and that the police were anxious for a riot 'to get even' with blacks." Sales of guns increased following the riot as people prepared to defend themselves.[7]

The combination of segregation and fear carried over to the City's schools. As Detroit's neighborhoods grew increasingly black, so too did its public schools. By the mid-1960s, the District was predominantly black and growing even more divided each year. In 1963, African Americans accounted for more than half of all Detroit Public School students for the first time in the District's history. In 1969, 61.5 percent of the students were black. Between 1969 and 1974, Detroit lost over 40,000 white students, so that by the time *Milliken* concluded, African Americans constituted 71.4 percent of Detroit students. As the schools became more segregated, racial tension increased. Between 1967 and 1971, racially charged violence and protestations erupted in Detroit's junior high and high schools. One scholar describes the school atmosphere as "increasingly anarchic."[8]

In the midst of this incredibly tense situation, politicians, policymakers, and activists tried to figure out how best to solve the racial injustices that permeated the school system. Such a disproportionate ratio of black and white students meant that a fight for intra-district integration was futile. Even if the District evenly distributed whites throughout all of its schools, Detroit Public Schools would be predominantly African American, and placing the white minority in these overwhelmingly black schools would only increase white flight out of the City. Thus, the only way to desegregate the Detroit schools was to go across district lines and bus students to and from the mainly white suburbs. Living in comfortable homes in all-white suburban neighborhoods, the last thing metro Detroit suburbanites wanted was to send their children to school back in the city. Yet that was exactly what inter-district busing threatened to do.

Milliken v. Bradley: From Decentralization to Desegregation

Two decades before the Detroit busing case went before the Supreme Court, the Court issued its most famous ruling regarding public education. *Brown v. Board of Education* (1954) overturned the doctrine of separate-but-equal schooling that had prevailed in the South for decades. In his unanimous opinion, Chief Justice Earl Warren declared that "[s]eparate educational facilities are inherently unequal." The Supreme Court thus outlawed *de jure* segregation of public schools – that is, segregation established by law.[9]

The *Brown* decision had a profound effect on school districts south of the Mason-Dixon Line. However, it had almost no effect in the North. Northern school districts were just as divided as Southern districts, but segregation in the North was not codified in law. Brown did nothing to combat the *de facto* segregation (segregation by custom, not by law) that prevailed in the North. A quarter century after *Brown*, public schools in northern cities like Detroit remained divided along racial lines.[10] In the 1960s and 1970s, the NAACP sought to extend the definition of *de jure* segregation in order to force Northern school districts to integrate. The NAACP's fight for desegregation culminated in the case of *Milliken v. Bradley.*

Milliken began at the local level in the late 1960s. School violence, coupled with low standardized test scores, prompted Michigan legislators to reconsider the District's organization and governance. Following the 1967 riot, the Black Power movement gained more adherents, who rejected integration and instead advocated community control of public schools. In this way, blacks would control the 133 identifiably black schools, and whites would control the 69 predominantly white schools. This arrangement likewise appealed to many whites, since it would effectively maintain segregation.[11]

In April 1969, Democratic State Senator Coleman A. Young, an advocate of black community control who would later become Detroit's first black mayor in 1974, proposed legislation for the decentralization of the Detroit Public Schools. Young's bill called for the division of Detroit into seven to eleven smaller districts, each having its own school board and a representative on a central City school board. The bill, which became Public Act 244, passed by a very large majority in both the state house and senate and was signed by Governor William Milliken on August 11, 1969. As the NAACP saw it, the only reason that the bill passed was that legislators believed it would maintain segregation. Segregation, however, was challenged in the final implementation of the act.[12]

The responsibility for implementation of Public Act 244 fell to the Detroit Board of Education. The Board included four liberals: president Abraham L. Zwerdling, a lawyer for the United Automobile Workers (UAW); Peter F. Grylls of the Michigan Bell Telephone company; physician Remus Robinson, the first black Board member; and African American minister Darneau Stewart. They were joined by three other members: conservative white attorneys James Hathaway and Patrick McDonald and a more radical African American lawyer, Andrew Perdue. Abraham Zwerdling and Andrew Perdue were especially influential in the debates over Public Act 244. Siding with Black Power advocates, Perdue initially supported community control at the expense of integration. Zwerdling, on the other hand, held fast to the goal of integration, considering it a moral obligation.[13]

The Michigan Legislature set a deadline of January 1971 for the Board to implement Public Act 244. Board members recognized the challenge set before them. For one thing, the District was already in debt, and decentralization would be costly. The Board estimated that implementation would cost between $430,000 and $460,000. Public Act 244 did not provide any financial support, so Zwerdling solicited funds from private organizations, particularly the Ford Foundation. Additionally, racial tensions within the community remained high so that white Detroiters would likely oppose a reorganization plan. Finally, the Board recognized that decentralization alone would not solve the District's problems. According to the Board, "Changes in governance, by themselves, cannot guarantee improved learning, greater resources for education, or more responsive attitudes."[14]

Despite these challenges, by April, the Board completed a plan for implementation. It redrew regional District lines based on the criteria of "size, racial composition, socio-economic balance, the geographic contiguity of areas, school feeding patterns, the number of school administrative units, and relations to other units of government." Though the plan was primarily couched in terms of decentralization, it also sought to achieve at least partial desegregation, thus going beyond the minimum requirements established by Public Act 244. It called for 9,000 students to change schools so that eleven racially identifiable high schools would be more integrated. For instance, at Denby High School, located "in the heart of conservative northeast Detroit," blacks made up less than 3 percent of the student body. Upon implementation of the Board's plan, Denby would become 53 percent African American.[15]

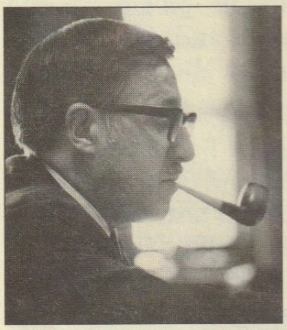
The Board formally presented its plan on April 7, 1970. Several hundred people attended the meeting, which lasted for five hours. Though representatives of the NAACP, the Urban League, and the American Civil Liberties Union offered support for the plan, the vast majority of attendees strongly opposed it. Among the protesters were white parents shouting, "Hell no, we won't go." According to Zwerdling, "All the trouble was because for the first time we devised a plan that not only moved black students into white schools, but also required white students to go to black schools." By the time of the meeting, Remus Robinson was hospitalized and unable to vote, leaving an evenly divided Board. In order to break the tie, Zwerdling successfully worked to persuade Andrew Perdue, a strong supporter of community control but not integration, to vote with the liberals. On April 7, the desegregation plan passed by a vote of 4 to 2 with only McDonald and Hathaway opposed.[16]

Following the adoption of the April 7 plan, the City exploded in opposition. Violence disrupted local schools, and Zwerdling himself faced death threats. The Citizens Committee for Better Education, referred to by the NAACP as one of the "'Save-our(white)-neighborhood-school' groups," led a successful initiative to recall the four Board members who voted for desegregation. The Committee got 114,000 petition signatures, and the recall passed on August 4 with nearly sixty percent of the vote. Governor Milliken, too, expressed "grave reservations" about the Board's plan.[17]

The Legislature also took action against the April 7 plan. On April 9th, the state house passed a bill requiring students to attend their local neighborhood school. In the State Senate, Coleman Young proposed a bill to completely dismantle the Board's plan. Young's bill became Public Act 48 and was signed by Governor Milliken on July 7, 1970. Public Act 48 divided Detroit into eight districts to be determined by a governor-appointed, three-person commission. It required students to be assigned to local neighborhood schools, but it also allowed "open enrollment" so that white students in racially transforming neighborhoods could attend white schools in other neighborhoods. Most of all, it maintained racial segregation in the Detroit Public Schools.[18]

Outraged by the Legislature's action, the Detroit branch of the NAACP turned to the national organization for help. At its national convention, the NAACP formally denounced Public Act 48 and thus the agenda of non-integrationist politicians, both black and white. Though united in their disapproval, NAACP leaders disagreed on how to proceed.

Success seemed unlikely. If the NAACP challenged the statute, legal precedent required that the lawyers prove de jure, not merely de facto, segregation. Nonetheless, NAACP General Counsel Nathaniel R. Jones felt obligated to take on the case. As NAACP lawyer Paul Dimond put it, "The fate of segregation in urban America and the direction of the civil rights movement hung in the balance." From that point on, the NAACP led the fight for desegregation in the Motor City. Norman Drachler was Superintendent of Detroit Public Schools.[19]



Detroit Free Press File Photo

Norman Drachler was superintendent of Detroit Public Schools.

Initially, Detroit Superintendent Norman Drachler and George Bushnell, the attorney for the Board, joined the NAACP in its opposition to Public Act 48. Bushnell, in fact, sat on the NAACP Board of Directors. Recognizing the difficulty of proving *de jure* segregation, however, NAACP lawyers felt it necessary to name the Board as a defendant in the case. The final determination came when the Detroit electorate recalled the liberal Board members. The split between the NAACP and the Board was final, and George Bushnell resigned from the NAACP Board of Directors.[20]

Detroit Free Press File Photo

John W. Porter was Michigan Superintendent of Public Instruction.

By August, the lines were drawn. On one side stood the NAACP representing African American Detroit parents and students. (Black student Ronald Bradley was the first person listed among the plaintiffs in the legal complaint, thus giving the case its name.) On the other side stood Governor William Milliken, Attorney General Frank Kelley, the State Board of Education, Superintendent of Public Instruction John W. Porter, the Board, and Superintendent Norman Drachler.[21]

Leading the legal arm of the NAACP was General Counsel Nathaniel R. Jones, an accomplished lawyer and civil rights activist. Jones put together an impressive legal team to challenge Public Act 48. He first selected white Tennessean Louis Lucas, one of the founders of the first integrated law firm in Memphis, a former United States Attorney in Louisiana, and member of the Justice Department Civil Rights Division. In addition to Lucas, Jones recruited lawyers William Caldwell, Paul Dimond, and J. Harold ("Nick") Flannery. Caldwell was a native of North Carolina and a recent graduate of the Memphis State Law School. Dimond was also a young lawyer, joining the Milliken case directly from a clerkship in the Sixth Circuit Court of Appeals. Flannery was more experienced, having served as a lawyer in the Civil Rights Division. At the time of Milliken, he served as the director of litigation for Harvard University's Center of Law and Education. With the addition of Norman Chachkin, an expert on Southern school desegregation cases, and attorneys Edward McCroom and Robert Pressman, the NAACP's legal team was complete.[22]

Though the plaintiffs were mostly black and the defendants mostly white, the controversy in 1969 and 1970 reveals that desegregation was not a simple black versus white issue but was much more complex. There were three sides to the debate. Most whites, both in Detroit and Lansing, opposed integration and took action to halt the implementation of the Board's desegregation plan. There was also another important group of non-integrationists. African American community control advocates sought black control of neighborhood schools rather than desegregation. Ironically, it was an African American politician, Coleman Young, who led the Michigan Legislature's opposition to the April 7th plan and proposed Public Act 48 to overturn the Board's program. In opposition to both of these non-integrationist groups, the NAACP and its white liberal allies pushed for desegregation through the implementation of the April 7th plan.

On August 18, 1970, the NAACP filed a complaint in the U.S. District Court for the Eastern District of Michigan. The plaintiffs argued that Public Act 48 was unconstitutional, and they asked the court to halt its implementation. The NAACP sought a court order to enact the original April 7th plan of partial desegregation. As the lawyers framed it, Act 48 violated the Constitution on five counts.

Editor's Plea for Pictures

Thanks to Rodney Curtis, Ruth Miles and Gina Brintley at the Free Press for help with photos so far. For coming issues, we still need photos circa 1971-1974 of Nathaniel R. Jones, Ronald Bradley, Governor William G. Milliken, J. Harold Flannery, Dean Robert Green and Louis Lucas. Any other contemporaneous pictures will be considered. Please contact me at 734-558-5593 or jmayer@wyan.org Thank you. John P. Mayer, *Editor*

First, it applied only to "first class school districts." Since Detroit was the only "first class" district in the state, the act imposed limitations on one district that it did not impose on the rest of the state. Thus, the NAACP concluded, Public Act 48 "contravenes the equal protection and due process clauses of the Fourteenth Amendment."

Second, the plaintiffs contended that Act 48 also violated the Fourteenth Amendment by "[impeding] the legally mandated integration of the public schools." Specifically, the Act allowed the Board to take advantage of residential segregation in order to maintain school segregation.

Third, again citing the Fourteenth Amendment, the NAACP legal team accused the Michigan Legislature of interposition, arguing that the legislature unconstitutionally reversed the desegregation efforts of the Detroit School Board, which was merely complying with the United States Constitution.

The fourth argument was the most inflammatory, linking school segregation to slavery itself. The plaintiffs argued that Public Act 48 "infringes upon the Thirteenth Amendment in that its effect is to relegate Negro school children in the City of Detroit to a position of inferiority and to assert the inferiority of Negroes generally, thereby creating and perpetuating badges and incidents of slavery." Finally, the plaintiffs charged that the Legislature's act "denies to black persons in Detroit the same rights to the full and equal benefit of all laws and proceedings as white citizens enjoy."[23]

In addition to its case against Public Act 48, the NAACP accused the Board of engaging in deliberate acts of discrimination and segregation. These acts included:

> assigning students, designing attendance zones for elementary[,] junior and senior high schools, establishing feeder patterns to secondary 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 the race and color of the children who are eligible to attend said schools.

Additionally, the plaintiffs argued that the Board assigned faculty in a racially discriminatory manner. These accusations of de jure segregation formed the basis of the NAACP's case when *Milliken* returned to the District Court the following spring.[24]

The District Judge hearing the case was Stephen J. Roth, a Hungarian immigrant and former Michigan Attorney General, who was appointed to the federal bench by President John F. Kennedy in 1962. Initially, Judge Roth was unmoved by the NAACP's legal arguments. On September 3, 1970, Roth ruled against the NAACP. "[T]he proofs," he argued, "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, progressive, and continuous attempt to promote and advance the integration of both pupils and faculty."[25]

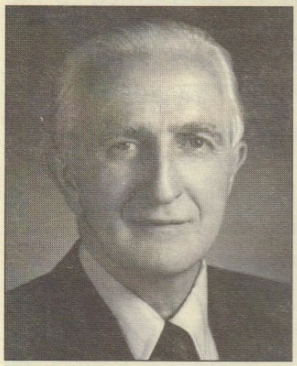
Had the Michigan Legislature not gotten involved in the controversy by overturning the Board's proposal, the case could not have gone beyond this point. With the Detroit exonerated, the NAACP's strategy would have come to a dead end. As it was, the Legislature's interference allowed the NAACP to make a larger case against the State, not just against Detroit. This proved crucial as the argument shifted from single-district desegregation to a metropolitan solution.

Even as Roth ruled against the NAACP, the civil rights lawyers began to envision a more radical approach: cross-district busing. On September 4, 1970, lawyer J. Harold Flannery expressed his opinion on the futility of intra-district desegregation. In a letter to NAACP General Counsel Nathaniel R. Jones, Flannery wrote, "I am suggesting that a conventional desegregation suit in a system the size of Detroit will absorb resources like the Pyramids and that its principal effect will be to accelerate white flights to Warren and similar havens . . . If I am correct, the result will be a segregated, under-financed school system." To counteract this situation, Flannery told Jones, "I recommend that you consider metropolitan relief."[26]

Flannery's letter was the first documented discussion of inter-district desegregation in the *Milliken* case. Flannery, however, recognized the difficulty of making this case in court. "In candor," Flannery wrote to Jones, "I think that we may well lose on that issue through the Supreme Court." Undeterred, Flannery continued,

> [B]ut I think for several reasons that we should do it. First, it is right. Secondly, this is an idea whose time will come, legislatively if not judicially, and this is the best case I know of to speed-up the evolutionary process. Thirdly, and I do not mean this in a cheerleading or cynical way, taking such a position will put the N.A.A.C.P. in the forefront of urging educational innovations beneficial to black and white America.[27]

The NAACP legal team was hesitant to argue for a metropolitan solution at the start. The lawyers agreed with Flannery that inter-district desegregation ought to be enacted eventually, but they did not think they could succeed on that count in 1970. Indeed, the plaintiffs had good reason to expect failure since cross-district busing was such an explosive issue. Not only would most whites oppose a metropolitan busing plan, but African American community control advocates would likely oppose it, as well. On November 15, 1971, *Time* ran a cover story that described the controversy over inter-district busing. "Under citywide integration," the article explained, "white children would be a 35% minority; under a metropolitan plan, they would remain 80% of the school population. That, of course, is precisely the reason that some blacks oppose the plan: it could dilute their clout in P.T.A. meetings and with school boards." Anticipating this controversy, the NAACP temporarily put the inter-district busing proposal on hold.[28]

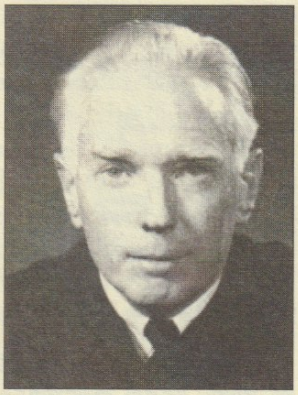


Sixth Circuit U.S. Court of Appeals Chief Judge Harry Phillips, of Nashville, Tennessee, who presided over the three-judge panel that heard the appeal from Judge Roth's decision denying a preliminary injunction against enforcement of Public Act 48.

Following Judge Roth's denial of a preliminary injunction, the NAACP appealed to the Sixth Circuit Court of Appeals. Chief Judge Harry Phillips presided over a hearing on September 8, 1970. Though Phillips also denied the plaintiff's plea for an injunction pending appeal, he agreed to allow the NAACP to present its case before a three-judge panel on October 2 in Cincinnati. This time, the NAACP's charge of interposition succeeded. On October 13, the Court of Appeals panel – consisting of Judges Harry Phillips from Nashville, George Edwards from Detroit, and John W. Peck from Cincinnati – declared Public Act 48 unconstitutional on the grounds that it nullified a constitutionally mandated, local desegregation effort. The judges ordered the District Court to hold further hearings on the case.[29]

The Court of Appeals' ruling was a significant victory for the NAACP. Bruce Miller, the chairman of the Detroit NAACP's legal redress committee, lauded the decision as a "vindication" of the four recalled Board members and stated that it "reaffirms our faith in this great American system of law."[30]

Detroit NAACP President Tom Turner declared, "This decision . . . could not have happened but for the fact that the NAACP remains the largest black civil rights organization in America supported by hundreds of thousands of members whose contributions make such a legal victory possible." Turner continued, "The NAACP intends to stay in the vanguard of those forces who militantly struggle through the democratic process to secure integration in American life."

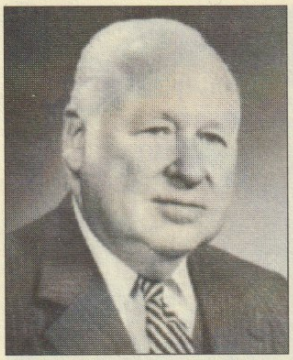


U.S. Circuit Judge George Edwards, panel member, who concurred in finding that Public Act 48 was unconstitutional on the grounds that it nullified a constitutionally mandated local desegregation effort.

Two days after the judges' ruling, Turner urged the Board to enact the April 7th plan, now that Public Act 48 no longer applied. Turner pledged cooperation with the Board if Board members agreed to go forward with the desegregation plan.[31] Had the Board complied, *Milliken* would have ended in 1970 as a local case. However, the Board did not enact the April 7th plan, and the case continued on its journey toward the United States Supreme Court.

Returning to Judge Roth, the NAACP requested the implementation of the Board's April 7th plan. On November 6th, Roth ordered the Board to submit alternative desegregation plans.[32] One *Detroit Free Press* commentator considered this order to be inevitable: "What citizens can know and must accept is that integration is as much the law of the land in Detroit as it is in the South and that they will have to accommodate themselves to the change inherent in the fact." "Such an accommodation," the author went on, "is going to call for a great deal of mutual forbearance and a determination to make the schools places where children can learn safely, well and even harmoniously. The society in which children will have to live later will be multi-racial." Remaining optimistic, the writer suggested that "with proper leadership, the schools in which they [the students] prepare themselves can also be multi-racial . . ."[33]

White Detroiters did not share this author's sentiments. "For a variety of reasons – race, convenience, social attachments, long-time plans," *Free Press* writer Roberta Mackey observed, "many parents and their children are angry and concerned about the integration plan." Mackey put it lightly.



U.S. Circuit Judge John W. Peck, panel member, who concurred in finding that Public Act 48 was unconstitutional on the grounds that it nullified a constitutionally mandated local desegregation effort.

In fact, six hundred white Detroiters protested when the Board met to consider desegregation plans.[34]

Still, complying with the court order, the Board offered three alternative plans. One was the original April 7th plan. Another called for the creation of magnet schools "designed to attract children to a school because of its superior curriculum." The third established special curricula that would draw both white and black students together for only part of the day. Judge Roth approved the magnet school plan on December 3rd, holding that the plan allowed students to voluntarily integrate while providing an incentive for academic achievement.[35]

The NAACP appealed again to the Court of Appeals. Lucas argued that the magnet school plan was unconstitutional because it created "one way" desegregation – that is, blacks would move to white schools, but whites would not move to black schools.[36] The judges ruled against the NAACP and upheld the District Court's decision on magnet schools. To the satisfaction of the NAACP, however, the Court of Appeals sent the case back again to the lower court to consider the *de jure* segregation charges against the Board.[37]

The District Court trial began on April 6, 1971, and lasted for forty-one days, finally ending on July 22nd. The NAACP legal team divided their argument into two parts. The first demonstrated residential segregation, and the second charged the District with *de jure* segregation. The housing argument was especially important and deserves extended analysis.[38]

J. Harold Flannery, Paul Dimond, and Robert Pressman spent ten days laying out the plaintiffs' housing case. First, the NAACP addressed the common misconception that blacks, like whites, could live anywhere they could afford. If that assumption was true, residential segregation (and thus school segregation) was purely a matter of free choice. The NAACP called upon Richard Marks of the Detroit Commission on Community Relations to dispel this myth. Marks testified that white neighborhoods included housing for all socioeconomic levels. However, these neighborhoods excluded African Americans regardless of their financial status. Marks described this phenomenon as "containment."[39]

Marks' assistant Jim Bush further explained the methods of racial containment. Bush cited real estate practices as the first means of residential segregation. He referred to Article 34 of the 1946 Michigan Corporation and Securities Commission Real Estate Division rule book, which stipulated, "A realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood." Additionally, Bush testified that point systems, steering, intimidation, and lack of police protection created and maintained racial residential segregation. Martin Sloane, formerly of the U.S. Civil Rights Commission and the Department of Housing and Urban Development, added government practices to Bush's list of discriminatory methods, specifically indicting the Federal Housing Administration.[40]

As Dimond remembers the case, one particular aspect of the plaintiffs' housing argument really struck a chord with Judge Roth. NAACP witnesses testified to the differences between white ethnics' and blacks' housing options. In the early days of the trial, Judge Roth stated, "[A]s I see some of the pattern of housing in the most distant past, not 1940 but well before that time, . . . pockets of immigrants came here and settled, and they did it for their own protection because they didn't know the language for one thing nor the customs nor the ways." Roth then asked Richard Marks, "[W]asn't it natural for them to collect in a group so they might better conduct their business and social intercourse?" Rephrasing his question, Roth queried, "Are there big pockets historically or present now of people who have come up from the South?" Marks' answer effectively captured the distinction between black and ethnic residential discrimination:

> All of the groups you described, including the Southern white, of course he has an initial point of entry, and then there is a period in which he gets his roots down but as soon as those roots are down he is established as part of the community and he begins to move. He moves where his job and his emerging status takes him which has been to housing elsewhere and so it was really this period of the post-war where we were so clearly able to see the movement of every one of the ethnic groups through the screen that historically kept them in a central city. We watched persons of Italian, German, Jewish, Russian and other extractions, watched those people move to secondary concentrations but through the screen to newer housing and watched the Negro make the effort to cross the line only to be in fact held in as a contained population.

Sociology professor Karl Taeuber buttressed Marks' assertion with statistics comparing the segregation of blacks and white ethnics. Taeuber demonstrated that African American Detroiters faced a rate of segregation more than twice that of Detroit's Polish community. In the end, according to Dimond, Judge Roth was moved by these arguments.[41]

The NAACP's convincing arguments on housing segregation may have softened Judge Roth's attitude toward the plaintiffs and eventually made him open to the most important development of the case – a proposal for a metropolitan-wide solution to Detroit's school segregation. Alex Ritchie, who represented a white anti-busing group, understood the vast scale of segregation to mean that intra-district desegregation was impossible. If nothing else, evenly dispersing white and black students throughout the city's schools would only encourage white flight to the suburbs, resulting in a district that was even more segregated. Judge Roth asked NAACP witness Martin Sloane his opinion on the subject. At this juncture, Sloane recommended a multi-district, metropolitan remedy.[42]

When Sloane initially proposed metropolitan desegregation, Judge Roth dismissed it. Flannery, however, persevered. He reminded the Judge that intra-district desegregation was impossible based on housing segregation and stated, "We are not prepared to concede, your Honor, that a metropolitan solution would not be viable or would be inappropriate." Mounting evidence of *de jure* housing segregation convinced the Judge of the need for metropolitan relief.[43]

Ironically, some white non-integrationists who still lived in Detroit also expressed support for cross-district busing at this stage of the case. It was not that they supported desegregation or "busing for the sake of busing," but they saw busing as the lesser of two evils. Intra-district integration would result in a white minority in each school. A metropolitan plan, however, would keep whites in the majority everywhere and might prevent further white flight out of Detroit. By the time the ten-day housing case concluded, Alex Ritchie of the white anti-busing group, in fact, stood as one of the most vocal advocates of inter-district busing.[44]

Despite the success of the NAACP's housing case, the plaintiffs still had to convince the court that Detroit Public Schools were guilty of *de jure* segregation. This second part of the trial, led by Louis Lucas and William Caldwell, lasted for a month. The lawyers accused the Board of deliberately establishing and maintaining school segregation using "optional attendance zones" (which allowed students in mixed neighborhoods to choose a different school in a racially homogenous neighborhood), new school construction, busing students, and drawing school boundary lines. The plaintiffs linked this discrimination to housing segregation. They argued that the District not only took advantage of residential segregation, but the schools also indoctrinated white students, teaching them that segregation was right.

Michigan State University Dean of Urban Affairs Robert Green told the court, "We did not educate the white adults who went to the Detroit Public School system who are now living in [the white suburb of] Livonia . . . All the whites have fled . . . I see that flight being significantly related to what we have not done in our public schools." Green continued, "I would say a major share of the responsibility [for metropolitan segregation] must be placed at the foot of the Detroit Public School system . . . My only position is that the public educational system can go a long way in offsetting these kinds of negative attitudes."

Finally, the NAACP linked the Board to the State, arguing that the State was culpable for the District's segregation. As such, the NAACP contended that the State shared the responsibility for a desegregation solution. Taking this argument a step further, State involvement justified metropolitan integration.[45]

On September 27, 1971, Judge Roth ruled in favor of the NAACP, finding the Board guilty of *de jure* segregation. "Governmental actions and inaction at all levels, federal, state and local," Roth stated, "have combined, with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area." He called school and housing segregation "interdependent phenomena." Finally, Roth found both the Board and the State of Michigan culpable for the District's segregation.[46]

The next step was to decide on the best plan for desegregation. Judge Roth ordered the Board to submit an intra-district integration plan. At the same time, he required the State to develop a metropolitan-wide, three-county solution. In the spring of 1972, the District Court considered the proposed plans. Roth dismissed the Detroit-only plan, arguing that it "would make the Detroit school system more identifiably Black . . . thereby increasing the flight of Whites from the city and the system."

In order to truly desegregate the District, Roth ruled that Detroit "must look beyond the limits of the Detroit school district for a solution to the problem." Moreover, the Court held that "[s]chool district lines are simply matters of political convenience and may not be used to deny constitutional rights."

On June 14, 1972, the District Court designated a "desegregation area" that encompassed fifty-three suburban districts plus Detroit. By incorporating all of these districts into a metropolitan plan, the Court sought to "achieve the greatest degree of actual desegregation to the end that, upon implementation, no school, grade or classroom [would be] substantially disproportionate to the overall pupil racial composition." Though divided, the Court of Appeals agreed that Detroit had engaged in de jure segregation and that a cross-district solution was "the only feasible desegregation plan."[47]

The magnitude of Roth's decision cannot be overstated. Inter-district busing was an astounding social experiment. Logistically, it would require extensive, complex planning to effectively transport tens of thousands of students across municipal borders. Moreover, it would restructure the very nature of the metropolitan region. Cross-district busing was not expected to be a panacea for the racial problems of metro Detroit, but by crossing the urban-suburban boundary, the ruling would begin to break down the color line that ran through area schools.

One *Time* reporter stated, "The rationale for busing plans is, simply, that busing is better than its alternatives. It seems for the moment to be the most effective and efficient method of providing minority groups with equal opportunities in education." Cross-district busing would certainly be inconvenient for whites and blacks alike. The reporter continued, "Large-scale busing for integration is not a long-range solution to the inequalities that still afflict American society. It is a transitional inconvenience, an interim, makeshift answer to an awkward social problem."

Perhaps the most revealing statement came from Nicholas Hood, an African American member of the Detroit City Council, who commented, "It's pragmatic. We don't have any desire to be close to white people just for the sake of being close to white people. We want the same thing everyone else wants so we can have the same opportunities for our kids to learn and grow."[48] In 1972, it seemed like Detroit was on the verge of a civil rights milestone. But the tide changed as *Milliken* continued to work its way through the judicial system. The massive social experiment of cross-district busing never came to fruition. ■

The author wishes to thank Kevin Boyle and Pamela Pennock for their constructive comments on this article.

End Notes

1. Sidney Fine, *Violence in the Model City: The Cavanagh Administration, Race Relations, and the Detroit Riot of 1967* (Ann Arbor: University of Michigan Press, 1989), 155, 196, 202-203, and 297-299 and Kevin Boyle, "The Fire Last Time: 40 Years Later, the Urban Crisis Still Smolders," *Washington Post*, July 29, 2007, B01.
2. *London Evening Free Press* quoted in Fine, *Violence in the Model City*, 385.
3. *Milliken, Governor of Michigan, et al. v. Bradley et al.*, 418 U.S. 717 and 737-745. The terms "inter-district" and "cross-district" were used interchangeably in contemporary sources. Both refer to crossing outside of the district lines, thus affecting both the city and its suburbs. I also describe this as "urban-suburban busing." In contrast, "intra-district" refers to measures solely confined within the district. Initially, the case was titled *Bradley v. Milliken*, but after the District Judge's ruling, the defendants appealed. Thus, the name of the case became *Milliken v. Bradley* in the Court of Appeals and the Supreme Court. For the sake of consistency, I have chosen to refer to all levels of the case as *Milliken v. Bradley.*
4. Kevin Boyle, *Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age* (New York: Henry Holt and Company, 2004), 9, 71-72, 83-84, 102, and 106; Kevin Boyle and Victoria Getis, *Muddy Boots and Ragged Aprons: Images of Working-Class Detroit, 1900-1930* (Detroit: Wayne State University Press, 1997), 12, 14, 92; Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton, NJ: Princeton University Press, 1996), 17 and Table 1.1, "Detroit's Population, 1910-1970," 23; Elizabeth Anne Martin, *Detroit and the Great Migration, 1916-1929* (Ann Arbor, MI: The Bentley Historical Library and the University of Michigan, 1993), 1-3; and Olivier Zunz, *The Changing Face of Inequality: Urbanization, Industrial Development, and Immigrants in Detroit, 1880-1920* (Chicago and London: The University of Chicago Press, 1982), 2.
5. Zunz, *The Changing Face of Inequality*, 291-292, 378, and passim; Boyle, *Arc of Justice*, 7, 9-10, and 75; and Sugrue, *Origins of the Urban Crisis*, 23-24.
6. Fine, *Violence in the Model City*, 384 and Sugrue, *Origins of the Urban Crisis*, Table 1.1, "Detroit's Population, 1910-1970," 23.
7. Fine, *Violence in the Model City*, 203, 247, 306, and 384-385.
8. Jeffrey Mirel, *The Rise and Fall of an Urban School System: Detroit, 1907-81* (Ann Arbor: University of Michigan Press, 1993), 330-331 and Appendix Tables 4 and 5, "Enrollment by Race and Ethnicity, 1921-80," 427-428.
9. David M. O'Brien, *Constitutional Law and Politics: Civil Rights and Civil Liberties*, Volume 2 (New York: W. W. Norton & Company, Inc., 2005), 1399.
10. James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (New York: Oxford University Press, 2001), xxi. See also Charles T. Clotfelter, *After Brown: The Rise and Retreat of School Desegregation* (Princeton: Princeton University Press, 2004), 3.
11. Mirel, *Rise and Fall*, 335 and 338-339; David Riddle, "Race and Reaction in Warren, Michigan, 1971 to 1974: *Bradley v. Milliken* and the Cross-District Busing Controversy," *Michigan Historical Review* 26, no. 2 (Fall 2000): 8; and Dimond, *Beyond Busing*, 26-27.
12. Peter Gavrilovich and Bill McGraw, *The Detroit Almanac: 300 Years of Life in the Motor City* (Detroit: Detroit Free Press, 2000), 267; Mirel, *Rise and Fall*, 335-337; and Memorandum from June Shagaloff to Mr. Roy Wilkins and Dr. John A. Morsell, May 5, 1970, Reel 11, Supplement to Part 23, Series C, Section II, National Association for the Advancement of Colored People Papers [hereinafter cited as NAACP Papers], Library of Congress, Washington, DC [microfilm edition].

13. Riddle, "Race and Reaction," 10; William Grant, "Integration's Last Hurrah: 'Where Did Everyone Go To?'" *The New Republic* (September 12, 1970): 20, quoted in Wilma Wood Henrickson, *Detroit Perspectives: Crossroads and Turning Points* (Detroit: Wayne State University Press, 1991), 513; Mirel, *Rise and Fall*, 330 and 339-340; Paul R. Dimond, *Beyond Busing*, (University of Michigan Press) 27; and Memorandum from June Shagaloff, 2. Dimond claims that Zwerdling advocated cross-district busing to accomplish desegregation. However, Dimond's book has no citations, and I have not found this claim substantiated by any other sources. Dimond, *Beyond Busing*, 27.
14. "A Program to Implement Decentralization of the Public Schools of Detroit," , and Letter from A.L. Zwerdling to Mr. Mitchell Sviridoff of the Ford Foundation, October 30, 1969, Reel 11, Supplement to Part 23, Series C, Section II, NAACP Papers, Library of Congress, Washington, DC [microfilm edition].
15. "A Program to Implement Decentralization of the Public Schools of Detroit," 5 and 12; Roberta Mackey, "A Mother Vows to Keep Fighting," *Detroit Free Press*, November 17, 1970, Supplement to Part 23, Series C, Sec II, NAACP Papers, Library of Congress, Washington, DC [microfilm edition]; and Mirel, *Rise and Fall*, 340. The numbers vary slightly in the sources. Dimond states that 10,000 students would switch schools. Dimond, *Beyond Busing*, 27.
16. Mirel, *Rise and Fall*, 340-342 and Grant, "Integration's Last Hurrah," 513.
17. Mirel, *Rise and Fall*, 342; Memorandum from June Shagaloff, 2; Grant, "Integration's Last Hurrah," 513-514; and Dimond, *Beyond Busing*, 29.
18. Mirel, *Rise and Fall*, 342-343 and Dimond, *Beyond Busing*, 28.
19. Dimond, *Beyond Busing*, 28 and 29. *Deal v. Cincinnati Board of Education* established the precedent of proving *de jure* segregation for school desegregation cases. Dimond, *Beyond Busing*, 26.
20. Dimond, *Beyond Busing*, 29-30; Letter from Nathaniel R. Jones to Thomas Turner of the Detroit NAACP, August 24, 1970, and Memorandum from Nathaniel R. Jones to Roy Wilkins, John A. Morsell, and June Shagaloff, August 27, 1970, Reel 11, Supplement to Part 23, Series C, Sec II, NAACP Papers, Library of Congress, Washington, DC [microfilm edition] At the same time, the NAACP decided to include faculty segregation in the case, thus causing it to also lose the support of the teacher's unions. Dimond, *Beyond Busing*, 30.
21. Complaint, Civil Action No. 35257, "In the United States District Court for the Eastern District of Michigan Southern Division," August 18, 1970, Supplement to Part 23, Series C, Sec II, NAACP Papers, Library of Congress, Washington, DC [microfilm edition]
22. Dimond, *Beyond Busing*, 21-26, 29-30, 32, and 35.
23. *Milliken v. Bradley*, 418 U.S. 722-723 and Complaint, 2, 5, 7, 9, and 10.
24. Complaint, 11.
25. Dimond, *Beyond Busing*, 31 and Ruling on Civil Action No. 35257, September 3, 1970, 3.
26. Letter from J. Harold Flannery to Nathaniel R. Jones, September 4, 1970, Supplement to Part 23, Series C, Sec II, NAACP Papers, Library of Congress, Washington, DC [microfilm edition].
27. Letter from J. Harold Flannery to Nathaniel R. Jones, September 4, 1970.
28. Dimond, *Beyond Busing*, 40 and "The Agony of Busing Moves North," *Time*, 15 Nov. 1971.
29. Sixth Circuit Court of Appeals Order, September 11, 1970, and David Cooper, "City School Integration Bid Upheld: State Action Is Overruled," *Detroit Free Press*, undated, Supplement to Part 23, Series C, Sec II, Reel 11, NAACP Papers, Library of Congress, Washington, DC [microfilm edition]; *Milliken v. Bradley*, 418 U.S. 723; and Dimond, *Beyond Busing*, 34.
30. "Memorandum to the Staff from Nathaniel R. Jones," November 4, 1970, Supplement to Part 23, Series C, Sec II, Reel 11, NAACP Papers, Library of Congress, Washington, DC [microfilm edition]; Miller quoted in Cooper, "City School Integration Bid Upheld."
31. Turner quoted in "NAACP Tells Board of Education 'Carry Out Your Plan,' Detroit Branch NAACP Press Release, October 15, 1970, Supplement to Part 23, Series C, Sec II, NAACP Papers, Library of Congress, Washington, DC [microfilm edition].
32. *Milliken v. Bradley*, 418 U.S. 723 and Dimond, *Beyond Busing*, 34.
33. "Schools: A Job To Do," *Detroit Free Press*, November 9, 1970, author unknown, Supplement to Part 23, Series C, Sec II, Reel 11, NAACP Papers, Library of Congress, Washington, DC [microfilm edition].
34. Mackey, "A Mother Vows to Keep Fighting" and Dimond, *Beyond Busing*, 35.
35. *Milliken v. Bradley*, 418 U.S. 723 and Dimond, *Beyond Busing*, 35-36.
36. Harry Salsinger, "Delay Integration, Drachler Asks Judge," *Detroit News*, November 26, 1970, Supplement to Part 23, Series C, Sec II, NAACP Papers, Library of Congress, Washington, DC [microfilm edition].
37. *Milliken v. Bradley*, 418 U.S. 723-724 and Dimond, *Beyond Busing*, 38.
38. *Milliken v. Bradley*, 418 U.S. 724 and Dimond, *Beyond Busing*, 42-56 and 59-65.
39. Dimond, *Beyond Busing*, 42-43 and 44.
40. Dimond, id. 37 and 45-48.
41. Dimond, id. 44-47.
42. Dimond, id. 48.
43. Dimond, id. 49 and 54.
44. "The Agony of Busing Moves North," Time, 15 Nov. 1971 and Dimond, *Beyond Busing*, 54.
45. Dimond, *Beyond Busing*, 60-61 and 63 and *Milliken v. Bradley*, 418 U.S. 725-727.
46. Dimond, *Beyond Busing*, 68 and 70 and *Milliken v. Bradley*, 418 U.S. 724 and 725-727.
47. *Milliken v. Bradley*, 418 U.S. 731-735.
48. "The Agony of Busing Moves North," *Time*, 15 Nov. 1971.

The Author

Jennifer A. Huff, a native of Livonia, Michigan, is a graduate student in modern American history at The Ohio State University, working under the supervision of Professor Kevin Boyle, author of *Arc of Justice: A Saga of Race, Civil Rights and Murder in the Jazz Age*. In earning her B.A., with high distinction, from the University of Michigan-Dearborn, her Senior Honors Thesis was *"'In this Changing World': The Baptists of Farmington, Michigan in the Second Great Awakening."*

Among her other works are *"'Wrongs Without Remedy': Milliken v. Bradley and the Continuing Struggle for Civil Rights in the Urban North, 1969-1974."* Fourth Annual Queen City Colloquium, University of Cincinnati, Cincinnati, Ohio, June 1, 2007.

"Work Together, Live Apart: Ford Workers and the Creation of Suburban Housing Segregation." Meeting of Minds XIV, University of Michigan-Dearborn, Dearborn, Michigan, May 19, 2006; Michigan in Perspective Conference, Wayne State University, Detroit, Michigan, April 21, 2006; Michigan Academy of Science, Arts & Letters Annual Meeting, Oakland University, Rochester Hills, Michigan, March 3, 2006; Phi Alpha Theta Biennial Convention, Philadelphia, Pennsylvania, January 5, 2006.

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