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The Profound Impact of *Milliken v. Bradley*

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THE PROFOUND IMPACT OF MILLIKEN v.
BRADLEY

Robert A. Sedler†

INTRODUCTION: THE CONSTITUTION AND METROPOLITAN DESEGREGATION

Certain constitutional decisions of the United States Supreme Court have a profound impact on American society because they determine the constitutional validity of governmental policies and practices that directly shape the nature of our society. Brown v. Board of Education¹ was such a decision. While Brown itself dealt only with the constitutionality of state-mandated racial segregation in the public schools of seventeen southern and border states, the effect of the Court's holding in that case was to invalidate all state-imposed racial segregation and with it the official structure of societal racism that existed in the southern part of the nation.² In retrospect then, Brown was not so much a decision about racial segregation in education as it was a decision about the meaning of racial equality under the fourteenth amendment.

In the years following Brown, the Court dealt more specifically with the nature of the constitutional right of children to attend schools that were in fact racially integrated. In this context, a racially integrated school means a school that has a substantial number of both black and white students in attendance, so that the school is not racially identifiable with respect to student composi-

† Professor of Law, Wayne State University. B.A. 1956, J.D. 1959, University of Pittsburgh. Ms. Ann Warner, a third-year student at Wayne State University Law School, provided valuable assistance in analyzing the studies and data dealing with "white flight" and academic achievement.

2. In a series of per curiam decisions following Brown, the Court invalidated state-imposed segregation with respect to all public facilities. See, e.g., New Orleans City Park Improvement Ass'n v. Deteige, 358 U.S. 54 (1958); Holmes v. City of Atlanta, 350 U.S. 879 (1955); Mayor & City Council of Baltimore v. Dawson, 350 U.S. 877 (1955). In my view, Brown, the companion case of Bolling v. Sharpe, 347 U.S. 497 (1954), and the above per curiam decisions, are best explained by the rationale that state-imposed segregation is necessarily unconstitutional because it restricts the liberty of blacks and whites to associate with each other in public facilities, and such a restriction is not reasonably related to any proper governmental objective. Sedler, The Constitution and School Desegregation: An Inquiry into the Nature of the Substantive Right, 68 Ky. L.J. 879, 940-44 (1979-1980).
The substantive right that has emerged is not a right to attend a racially integrated school, but only a right to attend school in a school system in which there are no vestiges of de jure segregation. The de jure segregation doctrine has assimilated, for purposes of constitutional analysis, both the segregation existing in school systems located in states where segregation was required by state law at the time of the *Brown* decision, and the segregation existing in school systems located in states such as Michigan, where it was not so required. The key element of the de jure segregation doctrine is governmental responsibility for the existence of racially identifiable schools in the system. When such responsibility can be shown—as by state law mandating racial segregation pre-*Brown*, or by intentionally segregative school board actions contributing to the racially identifiable character of some schools in the system—the system itself is considered to be de jure segregated, and the school authorities are required to desegregate the entire school system by eliminating racially identifiable schools to the maximum extent feasible. In the absence of governmental responsibility, however, the resulting school segregation is considered to be de facto and is not unconstitutional.

I have elsewhere criticized the de jure-de facto distinction, and will not repeat that criticism here. Suffice it to say that under the de jure segregation doctrine, the current right of a child to attend a racially integrated school depends in large measure on what happened in the school system in the past. It also depends, as we shall see, on the current enrollment of a sufficient number of children of both races in the school system so that the schools in that system can be effectively integrated. In Michigan, for example, children now enrolled in the Lansing and Kalamazoo school systems are attending racially integrated public schools as a matter of constitutional right.

3. For these purposes, a racially identifiable school is one that is attended only or almost entirely by children of one race so that it would be perceived objectively as a "one race" school. A racially identifiable "black" school is a school that is attended only by black children or has so few white children in attendance in relation to black children that it would be perceived objectively as a black school. A racially identifiable "white" school would exhibit the same attendance pattern in reverse. Since the overall white population in any metropolitan area will substantially outnumber the overall black population, it takes proportionately fewer blacks than whites to integrate a particular school. Given the existence of present residential patterns of extreme racial concentration and segregation in most parts of the country, the overwhelming majority of schools, in the absence of affirmative intervention, will be racially identifiable schools. This was the situation prevailing in the Detroit metropolitan area at the time of Milliken v. Bradley, 338 F. Supp. 582 (E.D Mich. 1971), aff'd in part, vacated in part, 484 F.2d 215 (6th Cir. 1973), rev'd, 418 U.S. 717 (1974), and this is the situation prevailing in the Detroit metropolitan area today.


5. *Id.* at 916-26.
because there was a finding of past intentional segregative actions on the part of the school authorities, and a resulting judicially imposed desegregation remedy. But children enrolled in the Grand Rapids school system do not have such a right since there was no showing that the Grand Rapids school authorities had engaged in intentionally segregative actions in the past. And the children enrolled in the Detroit school system, which is 90% black, are attending racially identifiable black schools, despite a judicial finding of unconstitutional de jure segregation, simply because there are not nearly enough white children in that system with which to integrate the schools.

In *Milliken v. Bradley,* the Supreme Court dealt with the imposition of a metropolitan desegregation remedy for the Detroit school system. The Court held that the imposition of a metropolitan remedy for the de jure segregation found to exist in an urban school system was not generally permissible. *Milliken* is enormously significant because it effectively insured the continued existence in this Nation of predominantly black urban school systems surrounded by all-white, or virtually all-white, suburban school systems. In retrospect, *Milliken* was the case that clearly defined the nature of the substantive right with respect to school desegregation: it is only the right to attend school in a school system in which no vestiges of state-imposed segregation presently exist. As Chief Justice Burger, writing for the Court, stated:

The constitutional right of the Negro respondents residing in Detroit is to attend a unitary school system in the district. . . . The view of the dissenters, that the existence of a dual system in Detroit can be made the basis for a decree requiring cross-district transportation of pupils, cannot be supported on the grounds that it represents merely the devising of a suitably flexible remedy for the violation of rights already established by our prior decisions. It can be supported only by drastic expansion of the constitutional right itself, an expansion without any support in either constitutional principle or precedent.

In *Milliken,* both the district court and the Sixth Circuit found that the desegregation of the Detroit system by a remedy involving

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the cross-transportation between students in Detroit and in the fifty-
three adjacent suburban school systems covered by the desegregation
plan, was fully practicable. But since, as Milliken makes clear, the
nature of the substantive right to school desegregation relates to the
situation prevailing in the school system in which the child is en-
rolled, rather than to attendance at a racially integrated school, the
practicability of a metropolitan desegregation plan was irrelevant in
the constitutional equation.

I followed the Milliken litigation with intense interest because
at the time I was lead counsel in a case seeking to impose a similar
metropolitan desegregation remedy for Louisville-Jefferson County,
Kentucky. In the Louisville-Jefferson County litigation, the Sixth
Circuit, in reliance on its Milliken decision, also ordered the imposi-
tion of a metropolitan desegregation remedy. The school districts
sought certiorari from that decision to the Supreme Court. When the
Court decided Milliken, it granted the school districts' petition, va-
cated the judgment of the Sixth Circuit, and remanded the case for
reconsideration in light of Milliken. On remand, we successfully dis-
tinguished Milliken and prevailed. The Sixth Circuit reinstated its
prior decision, holding that the imposition of a metropolitan desegre-
gation plan for Louisville and Jefferson Counties was proper. The
Louisville and Jefferson County districts were merged in accordance
with Kentucky law, and a metropolitan desegregation plan that pro-
vided for the desegregation of all the schools in the merged Jefferson
County school district went into effect during the 1975-76 school
year. Today, over ten years later, all of the schools in the Jefferson
County school district remain racially integrated; the black percent-
age of the school district has increased only in accordance with nor-
mal demographic change, and the desegregation plan, while not uni-
versally popular, has been accepted by the community.

The legal arguments used in the Louisville-Jefferson County
case and my views at the time as to how metropolitan desegregation
could sometimes be achieved notwithstanding the strictures of Milli-
ken have been discussed elsewhere, and will not be repeated here.

10. The dissenters in Milliken emphasized this point. Justice White noted
that the Court majority left "unchallenged the District Court's conclusion that a
plan including the suburbs would be physically easier and more practical and feasi-
ble than a Detroit-only plan." Id. at 767 (White, J., dissenting). Similarly, Justice
Marshall pointed out that 17 of the suburban systems included in the plan were
contiguous to Detroit, and the remainder were no more than eight miles outside
Detroit's limits; the maximum one-way travel time under the plan was forty min-
utes. Id. at 813 (Marshall, J., dissenting).

11. Newburg Area Council, Inc. v. Board of Educ., 489 F.2d 925 (6th Cir.
1973), vacated and remanded, 418 U.S. 918, reinstated, 510 F.2d 1358 (6th Cir.

12. See Sedler, Metropolitan Desegregation in the Wake of Milliken—On
Suffice it to say that, following the Milliken decision, efforts to achieve metropolitan desegregation have not been pursued in Detroit, and generally have not been pursued elsewhere. As Justice Marshall prophesied in his Milliken dissent, the effect of the decision would be to "allow our great metropolitan areas to be divided up each into two cities—one white, the other black." This is indeed what has happened, and in Detroit, as in many other metropolitan areas, we have today overwhelmingly black urban school systems, surrounded by all-white, or virtually all-white, suburban school systems.

In looking back at the Milliken decision, removed from my prior advocacy perspective and, therefore, perhaps with a greater degree of detachment, I would make the following observations. Looking to the line of growth of constitutional doctrine in the area of school desegregation since Brown, it would not have been inconsistent for the Court in Milliken to have held—as four members were willing to do—that school district lines could be crossed and a metropolitan desegregation plan imposed in order to remedy effectively the condition of de jure segregation found to exist in an urban school district. At the same time, given the premises of the de jure segregation doctrine as it developed both prior to and subsequent to Milliken, it is probably more consistent with that line of growth for the Court to have held, as it did in Milliken, that the remedy for a condition of de jure segregation cannot extend beyond the boundaries of the school district where the constitutional violation occurred.

At the time the Court decided Milliken, the line of growth of constitutional doctrine in the area of school desegregation involved a continuing expansion of the duty to eliminate the condition of de jure segregation and to achieve the actual desegregation of the schools in the unconstitutional dual school system. In Green v. County School Board, decided in 1968, the Court invalidated the use of so-called "freedom of choice" plans in states where state law required segregation pre-Brown, if those plans were not effective to produce actual desegregation. The following year, in Alexander v. Holmes County Board of Education, the Court laid to rest the "all deliberate speed" formulation, which had delayed full implementation of desegregation plans in many southern and border states. The

Losing Big Battles and Winning Small Wars: The View Largely from Within, 1975 Wash. U.L.Q. 535.

13. For examples of other cases in which a metropolitan desegregation remedy was ordered following Milliken, see United States v. Board of School Comm'rs, 573 F.2d 400 (7th Cir.), cert. denied, 439 U.S. 824 (1978); Evans v. Buchanan, 393 F. Supp. 428 (D. Del.), aff'd mem., 423 U.S. 963 (1975).
next “fork in the road” was reached in 1971 in Swann v. Charlotte-Mecklenburg Board of Education,17 in which the Court held that in school districts where state law required segregation pre-Brown, geographic attendance zoning was insufficient to satisfy the school district’s duty to convert from a dual to a unitary system if such zoning perpetuated a large number of racially identifiable schools. Swann thus approved the imposition of a remedy involving extensive student transportation when this was necessary to achieve the effective desegregation of the school system.

The following year the Court held that separate school districts could not be created from an existing de jure segregated school district when the effect of the separation would be to impede one of the new district’s required desegregation.18 And in 1973, the school desegregation “moved north.” The lower federal courts had been consistently finding the existence of de jure segregation in school districts located in states where segregation was not required by state law pre-Brown. The de jure segregation resulted from the intentionally segregative actions on the part of the school authorities that contributed to the racial identifiability of some of the schools in a school system.19 In Keyes v. School District No. 1, Denver,20 the Court approved this application of the de jure segregation doctrine. It further held that proof of segregative intent with respect to part of the school system created a presumption that the segregated character of the entire school system was also the result of this segregative intent, justifying the imposition of a system-wide desegregation remedy.21

In Milliken, the essential theory of metropolitan desegregation advanced by the plaintiffs and accepted by the lower courts was that of state responsibility to remedy unconstitutional de jure segregation. The plaintiffs argued that it was within the authority of the federal courts to impose an interdistrict desegregation remedy in the metropolitan setting when: (1) the urban district was in constitutional violation; (2) the actions of the state contributed to this violation; and (3) the state had the primary responsibility for public education and could exercise significant control over the local school

19. See the discussion and review of cases in Sedler, supra note 2, at 896-99; Sedler, supra note 12, at 545-46.
21. See the discussion of Keyes in Sedler, supra note 2, at 899-904; Sedler, supra note 12, at 546-47. The Court subsequently justified the imposition of system-wide desegregation in these circumstances on the basis of the school board’s continuing violation of its affirmative duty to eliminate the de jure character of the school system. See Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526 (1979); Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979); Sedler, supra note 2, at 904-15.
districts. The necessity for such a remedy was premised on the district court's finding, which was not disputed in *Milliken*, that a remedy limited to the urban district alone would be inadequate to achieve meaningful and lasting desegregation within that district. The Sixth Circuit had no difficulty in accepting this argument, and it would not have been a "leap of faith" for the Supreme Court to have accepted it as well. If the Court had done so, it would have merely continued the development of the line of growth of constitutional doctrine in the area of school desegregation in the direction of the extension of the duty to desegregate. That duty would have been extended to the state and would have included the duty to desegregate across school district lines when effective desegregation could not be achieved within the boundaries of the district where the constitutional violation occurred.

However, as stated previously, the essential premise of the de jure segregation doctrine is that there is governmental responsibility for the existence of racially identifiable schools in the school system. Regardless of whether the Court focused on the actions of the school authorities or on the actions of the state, in *Milliken* those actions were shown to have contributed to the existence of racially identifiable schools only within the boundaries of the Detroit school district. Thus, as the Court stated, since "[d]isparate treatment of white and Negro students occurred within the Detroit school system . . . the remedy must be limited to that system." For the Court in *Milliken* to have approved the imposition of a metropolitan desegregation remedy when the constitutional violation occurred only within the boundaries of the Detroit school district—based on the state's

22. The court of appeals stated:

Thus, the record establishes that the State has committed de jure acts of segregation and that the State controls the instrumentalities whose action is necessary to remedy the harmful effects of the State acts. There can be little doubt that a federal court has both the power and the duty to effect a feasible desegregation plan. . . . In the instant case the only feasible desegregation plan involves the crossing of the boundary lines between the Detroit School District and adjacent or nearby school districts for the limited purpose of providing an effective desegregation plan. The power to disregard such artificial barriers is all the more clear where, as here, the State has been guilty of discrimination which had the effect of creating and maintaining racial segregation along school district lines. . . .

. . . .

We reject the contention that school district lines are sacrosanct and that the jurisdiction of the District Court to grant equitable relief in the present case is limited to the geographical boundaries of Detroit. We reiterate that school districts and school boards are instrumentalities of the State.

484 F.2d at 249-50 (citations omitted).


24. 418 U.S. at 746 (citation omitted).
responsibility for public education generally—would have been to undercut the essential premise of the de jure segregation doctrine. Given the Court's adherence to the de jure segregation doctrine, the result the Court reached should not be surprising in retrospect. Similarly, the Court's refusal to extend the line of growth of constitutional doctrine in the area of school desegregation to authorize the imposition of a metropolitan desegregation remedy for the de jure segregation found to exist only in the urban school district should also come as no surprise.

The result in *Milliken* perhaps reflects the Court's ultimate resolution of a more fundamental constitutional question: should the Constitution be interpreted to require the state to operate racially integrated schools, to the maximum extent feasible, without regard to a showing of de jure segregation. Despite extensive criticism of the de jure segregation doctrine, both within and without the Court, and by those who favor constitutionally required school desegregation and those who do not, the Court has continued to adhere to this doctrine. It thus has made the right of children to attend a racially integrated school constitutionally dependent on a showing of governmental responsibility, often in the distant past, for the existence of racially identifiable schools in the school system where the child is enrolled. This means that there is no constitutional obligation on the state to bring about the operation of racially integrated schools within a school district, let alone on a metropolitan basis.

At the time the Court decided *Milliken*, it was usually possible to establish the existence of de jure segregation in urban school districts, both in states where state law required segregation *pre-Brown* and in states where it was not so required. In school districts located in states where segregation was required by state law *pre-Brown*, such as Louisville, the state law mandating the operation of schools on a racially segregated basis satisfied the element of de jure segregation. Since *Swann* held that geographic zoning was insufficient to satisfy the school board's duty to establish a unitary school system if the result of such zoning was to retain a large number of racially identifiable schools, it followed that the existence of a number of *pre-Brown* racially identifiable schools rendered the school system a dual school system for constitutional purposes. In the Louisville school district, for example, when we filed the desegregation suit in 1972, fifty-six of the sixty-five schools in the district were *pre-Brown* schools, and thirty-five of them had never changed their racial composition. This pattern of extant *pre-Brown* schools that had never

26. Of the remaining 21 schools, 13 were *pre-Brown* white schools, located in close proximity to *pre-Brown* black schools and designed to serve whites residing in the neighborhood. Eventually, these schools became racially identifiable black
changed their racial composition was prevalent in all urban school systems in states where segregation was required by state law pre-
*Brown*, so all of these systems would be deemed to be de jure segregated.

In school districts located in states where segregation was not required by state law pre-*Brown*, the element of de jure segregation was satisfied by showing that the school district engaged in intentionally segregative acts, often only with respect to a few schools and sometimes occurring in the distant past, which contributed to the racial identifiability of those schools. In case after case, the lower federal courts found that such acts had occurred, rendering the school districts segregated for constitutional purposes.\(^{27}\) The Supreme Court's decision in *Keyes*, upholding a finding of de jure segregation on this basis, made it clear that school segregation had become a national problem, and that if desegregation was to be ordered by the courts, it would be desegregation throughout the Nation.

I thus explained the "legal posture" of the *Milliken* case as follows:

> With the decision in *Keyes*, school desegregation has clearly become a national problem, as has the question of metropolitan desegregation. No longer is it difficult to prove that urban school districts, wherever located, are in constitutional violation if they have a high degree of racial segregation. In states in which racial segregation was formerly required by law, segregation is found to be a vestige of state-imposed segregation under *Swann*, and in other states segregation is found to result from segregative intent under *Keyes*. If metropolitan desegregation were to be required, it would certainly be required on a nationwide basis. This was the next fork in the road, the one reached in *Milliken v. Bradley*.\(^{28}\)

Perhaps reflecting my frustration and disappointment with the *Milliken* decision, I further concluded that in *Milliken*
the Court had come to another "fork in the road," but for the first time it chose the road that led away from desegregation and away from equal educational opportunities for black children. In the wake of Milliken, interdistrict relief and metropolitan desegregation would not become the conventional remedy for eliminating state-imposed segregation in urban school districts. A big battle had indeed been lost.29

Looking at Milliken from a current perspective, it is clear that the Court made the decision not to interpret the Constitution to require the states to operate racially desegregated schools to the maximum extent feasible. If the Court had accepted the theory of metropolitan desegregation advanced by the plaintiffs in that case, and if it had approved the imposition of a metropolitan desegregation remedy in Detroit, metropolitan desegregation would have become the norm in many of the Nation's metropolitan areas. This is because frequently it would not have been difficult to prove both the existence of de jure segregation in the pivotal urban school district, and that a desegregation remedy limited to the urban school district alone would not effectively desegregate that district. Since America's black population is concentrated in the central cities of the Nation's major metropolitan areas, and since, as will be pointed out subsequently, metropolitan desegregation is not likely to produce substantial "white flight" from the public schools, the approval of the imposition of a metropolitan desegregation remedy in Milliken would have resulted in a great deal of actual school desegregation throughout the United States.

This was not to be, and as Justice Marshall prophesied in his dissent, the effect of the Milliken decision has been to divide many of America's metropolitan areas into predominantly black urban school systems surrounded by all-white, or virtually all-white, suburban school systems. As a result, today large numbers of both black and white children are respectively attending racially identifiable black schools in adjacent predominantly black urban systems, and racially identifiable white schools in virtually all-white suburban systems.30 To say the least, the Supreme Court's decision in Milliken has had a most profound impact on American society.

29. Id. at 570-71.
THE IMPACT OF MILLEKEN ON DETROIT: THE DETROIT PUBLIC SCHOOLS TODAY

In the absence of affirmative intervention to bring about the operation of racially integrated public schools, either within a school district, or in a metropolitan area by crossing existing school district lines, the overwhelming majority of public schools in the United States would be racially identifiable with respect to student composition. This is due to the patterns of extreme racial residential segregation and concentration that have long existed virtually everywhere in this Nation. Because of these patterns of extreme racial residential segregation and concentration, school districts organized along geographical lines will often be predominantly white or predominantly black; and within a school district, the use of geographic attendance zoning, without more, will produce a large number of racially identifiable schools.

In the states where state law required school segregation pre-
Brown, such state-required school segregation was superimposed on existing racial residential patterns and may have contributed, in some degree, to the continuation of those patterns after state-required school segregation was declared unconstitutional. But, even in the absence of state-required school segregation, most public schools would still have been racially identifiable, just as they were in states where segregation was not required by state law. In the school districts located in the latter states, school authorities would often build on existing patterns of racial residential segregation to maximize school segregation and to perpetuate racially identifiable schools. However, in those districts, such intentionally segregative actions would only occur in a relatively small portion of the school system, primarily in areas undergoing racial residential transition and areas in which blacks and whites lived in fairly close proximity. Even if those actions had not taken place, most of the schools in the system would still be racially identifiable. Conversely, if it were not for patterns of racial residential segregation, there would be nothing that the school authorities could do, short of the most blatant racial gerrymandering, to establish racially identifiable schools. And if it were not for patterns of racial residential concentration, with blacks concentrated in the central cities of the nation’s metropolitan areas, and the adjacent suburbs being all-white or virtually so, there would not

31. The likelihood of a particular school being racially identifiable with respect to student composition would depend in large measure on the geographical area covered by the school’s attendance zone. The racial identifiability of the schools within a system would be greatest at the elementary school level and least at the high school level. Racial identifiability could be maximized by establishing schools with relatively small capacities and, as a result, with relatively small attendance zones.
be predominantly black urban districts surrounded by virtually all-white suburban districts. It cannot be seriously disputed, therefore, that the pattern of racial residential concentration and segregation, interacting with the existence of geographically separate school districts and the use of geographic attendance zoning to assign students within a school district, has always been the primary cause of the racial segregation that has existed in the public schools throughout the United States.32

The extent of racial residential concentration and segregation in the United States today is simply staggering. The black population is concentrated within the central cities of the Nation's largest metropolitan areas, where they generally live in racial isolation from both urban and suburban whites. A recent study on racial residential concentration and segregation, based on 1980 census data, concluded that "[i]n areas which have large black populations, there are many central city neighborhoods and a few in the suburbs which are either all-black or well along to becoming exclusively black enclaves. Most other neighborhoods have no more than token black populations."33 The extent of racial concentration and segregation can be measured by the index of dissimilarity. According to that index, if there were perfect residential racial integration, the index would be 0; if there were complete residential racial segregation, it would be 100. According to 1980 census data, the index of dissimilarity for the Detroit metropolitan area was 88. For other metropolitan areas of 2.5 million people or more, the index of dissimilarity was as follows: New York - 81; Los Angeles-Long Beach - 81; Chicago - 88; Philadelphia - 79; San Francisco-Oakland - 72; Washington, D.C. - 70; Dallas-Fort Worth - 79; Houston - 75; Boston - 77; Nassau-Suffolk (Long Island) - 77.34

Racial residential concentration goes hand in hand with racial residential segregation, with the black population being concentrated in the central cities, and the white population being concentrated in the suburbs. In Michigan, for example, the 1980 census data revealed that of the statewide black population of 1,198,710, a total of 785,123, close to 66% of blacks, resided within the corporate boundaries of the City of Detroit. In the suburban cities within the Detroit metropolitan area, that is, in Wayne, Oakland, and Macomb Counties, excluding Detroit, Highland Park, and Hamtramck, blacks

34. Id. at 18.
made up less than 4% of the population.  

The present pattern of racial concentration of blacks in the central city and whites in the suburbs has been an ongoing process, resulting in the existence of an overwhelmingly black city school system surrounded primarily by a large number of all-white, or virtually all-white, suburban school systems. In 1950, for example, the population of the City of Detroit was approximately 1,900,000, and that population constituted 61% of the population of the metropolitan area. By 1970, the city population had declined to approximately 1,500,000, which constituted only 36% of the population of the metropolitan area. The city population in 1970 consisted of 838,877 whites and 660,428 blacks. Between 1970 and 1980, the white population of the city dropped drastically to 413,730, while the black population had increased to 758,939. By 1980, Detroit's population declined to less than 30% of the metropolitan area population.

The black public school population, which is always substantially higher than the overall black population, likewise showed a dramatic increase in the Detroit school system. In the 1960-61 school year, when there were 285,512 students in the Detroit school system, 45.8% were black. By the 1966-67 school year, when the school population had increased to 297,035, that figure reflected an increase of approximately 38,000 blacks, and a decrease of approximately 25,000 whites, leading to a 56.7% black student population. In the 1970-71 school year, at the time of the Milliken litigation, the size of the school system remained relatively constant at 289,743 students, but the black population had increased to 63.8%. The current student population in the Detroit school system has fallen to

35. These figures are taken from a review of 1980 census data in connection with my representation of Coleman S. Young and the Detroit Branch, NAACP as an amicus curiae in In re Apportionment of State Legislature-1982, 413 Mich. 96, 321 N.W.2d 565, appeal dismissed sub nom. 459 U.S. 900 (1982). The largest concentration of blacks outside of Detroit was in Flint, which had a 1980 population of 66,124 blacks and 89,647 whites. The next largest concentration of blacks was in Grand Rapids, which had a population of 28,602 blacks and 147,171 whites. In the tri-county area, outside of Detroit, Highland Park, and Hamtramck, where the overall population was approximately 2.8 million, there were only 10 cities with a black population of as much as 1000: Pontiac - 28,532; Inkster - 19,994; Southfield - 6976; Ecorse - 5676; Romulus - 4833; River Rouge - 4218; Oak Park - 3814; Mt. Clemens - 3437; Westland - 2200; Wayne - 1123.

36. This is due primarily to the demographic factor of a substantially higher fertility rate for black women of childbearing age in comparison to that for white women of childbearing age. In addition, relatively few black children are enrolled in private schools.

37. For a discussion of the history of residential racial segregation in the Detroit metropolitan area and its relationship to school segregation at the time of the Milliken litigation, see Farley, Population Trends and School Segregation in the Detroit Metropolitan Area, 21 WAYNE L. REV. 867 (1975).
approximately 180,000 students, of which approximately 90% are black.\textsuperscript{38}

The condition of extreme racial residential segregation and concentration that exists in the Detroit metropolitan area today, as in the United States generally, is directly traceable to a long history of racial discrimination in the "housing delivery system"; the process by which housing is constructed, sold, financed, and generally made available. Traditionally, blacks living in metropolitan areas could obtain housing only in the oldest and least desirable parts of the central city. They could not obtain housing anywhere else because the real estate industry and the government at all levels determined that the "housing delivery system" would operate on a racially segregated basis. Blacks, for example, could not obtain Federal Housing Administration (FHA) financing to purchase homes in white residential areas. In fact, until 1949 the FHA required the imposition of a racially restrictive covenant as a condition for FHA financing of any home. Public housing operated strictly on a racially segregated basis, with black public housing located in black neighborhoods, and white public housing located in white neighborhoods. The "urban ghetto" expanded as the increasing black population literally pushed blacks into white residential areas. Whites then moved out, their movement facilitated by real estate "blockbusting," and the area would be designated for "black occupancy." Needless to say, most of the metropolitan area suburban sections were never designated for "black occupancy."\textsuperscript{39} While efforts have been made to explain the condition of extreme racial residential segregation and concentration as reflecting racial income differences and "ethnic choice,"\textsuperscript{40} it cannot be doubted that the long history of governmental and private racial discrimination in the operation of the "housing delivery system" played a significant part in creating this condition.\textsuperscript{41}

This condition of extreme racial residential segregation and concentration has not and will not be ameliorated to any substantial

\textsuperscript{38} The figures as to the black school population and the overall city population at the time of the \textit{Milliken} litigation are taken from Judge Roth's opinion in \textit{Milliken}, 338 F. Supp. at 585-86. Judge Roth predicted that "if present trends continue," the Detroit school system would be virtually 100% black by 1992. \textit{Id.} at 585.

\textsuperscript{39} For a review of the history of racial discrimination in the housing delivery system, see Taueber, \textit{Demographic Perspectives on Housing and School Segregation}, 21 WAYNE L. REV. 833, 846-50 (1975).

\textsuperscript{40} For an explanation of residential racial segregation and concentration in Detroit on this basis in the context of the \textit{Milliken} litigation, see E. WOLF, \textit{supra} note 27, chs. 1-5.

\textsuperscript{41} \textit{See generally} NAT'L ADVIS. COMM'N ON CIV. DISORDERS REP. ch. 6 (1968); U.S. COMM'N ON CIV. RIGHTS, \textit{EQUAL OPPORTUNITY IN SUBURBIA} 29-69 (1974).
degree by the enactment of fair housing laws. Racial residential patterns, once established, are highly resistant to change. Experience shows that once blacks move into any residential area in substantial numbers, a "tipping point" will be reached, and whites will perceive the area as being "less desirable" because of the substantial presence of blacks. Even if there is not an immediate exodus of whites, whites are not likely to move into that area when vacancies occur. These vacancies are likely to be filled by blacks, and in time the area will become predominantly black. By the same token, blacks are generally reluctant to move into all-white areas, so they will move into areas where there is an existing black population, thereby causing that area to reach the "tipping point." Few stable racially integrated residential areas exist and, as a general proposition, blacks and whites live in isolation from each other. As stated above, it is this extreme racial residential segregation and concentration that is the primary cause of school segregation, both within a school system and between the predominantly black urban system and the all-white or virtually all-white suburban systems.

The Detroit school system today reflects, perhaps in its most extreme form, the condition existing in many of the nation's metropolitan areas. There is an urban school system, consisting primarily of low and moderate income black children, surrounded by all-white or virtually all-white suburban school systems. It is a matter of common knowledge that except for the city-wide selective high schools of Renaissance and Cass Technical, and perhaps a few elementary schools, middle class black and white parents residing in Detroit will not utilize the Detroit public schools. Those middle class parents of both races who choose to live in Detroit have thereby also made the decision to send their children to private schools. And they do so for good reason. Not only are the Detroit public schools in the aggregate academically inferior to the schools in practically all of the other school systems in the Detroit metropolitan area, but also many of the Detroit schools are characterized by a high level of social disorganization. An overriding concern in the Detroit schools today is violence and students carrying lethal weapons. In such an atmosphere, academics assume decidedly lesser importance.

The aggregate academic performance of the students in the Detroit schools is decidedly inferior to the academic performance of students in Michigan public schools generally. Michigan Educational Assessment Program (MEAP) results indicate that the reading scores for Detroit public school students are fifteen to twenty points below state norms. Those tests measure mastery of basic skills in reading and mathematics. A passing MEAP score for a school system would be for 75% of the students to show mastery over 75% of the objectives. For the 1985-86 school year, 61.2% of Detroit fourth graders mastered the reading objectives, compared with a state-wide
figure, including Detroit, of 79.3%. At the seventh grade level, the Detroit figure was 59.7%, while the state-wide figure was 80.3%. At the tenth grade level (by which time a high proportion of Detroit students have dropped out), the Detroit figure was 65.7%, while the state-wide figure was 81.9%. In mathematics, the gap was not large among fourth graders (74.5% for Detroit, compared to 83.6% state-wide), but was much higher in the later grades. At the seventh grade level, the figure was 48% for Detroit, compared with 66.2% state-wide, and at the tenth grade level, it was 49.9% for Detroit, compared with 67.8% state-wide.42

The results of the California Achievement Test Scores indicate that Detroit public school students fall further behind national norms with increased years of schooling. On the 1986-87 reading test, Detroit third graders were only three months behind national norms, while eighth graders were an entire year behind, and eleventh graders were one year and four months behind. In mathematics, third graders were at the national norm and fifth graders were only one month behind, but eighth graders were seven months behind, and eleventh graders were a full one year and eight months behind.43 The decline in academic performance commensurate to the increased years of schooling is a factor contributing to the incredibly high dropout rate of Detroit public school students. The dropout rate for a cohort of Detroit students moving through four years of high school, based on data from the 1983-84 academic year, was calculated at 58.8%, compared to 17.6% for students in the remainder of the state.44

The Detroit school system then is attended primarily by low and moderate income black students and is characterized by low levels of academic achievement, a very high dropout rate, and social disorganization in the schools. It is a school system for the black urban underclass. The same kind of situation, possibly excepting the degree of social disorganization, exists in a number of other urban school systems in the United States.

The condition existing in the Detroit Metropolitan area seems acceptable to the political leadership, both black and white, and to both middle-class blacks and middle-class whites. Suburban whites are not disturbed, because their children are attending predomi-

42. The summary of MEAP results is taken from DETROIT HEALTH DEP’T REP., BUREAU OF SUBSTANCE ABUSE, DETROIT YOUTH: “HARMONIES OF LIBERTY” OR “DRUNK WITH THE WINE OF THE WORLD?” 11-14 (Feb. 1987). The data dealing with academic achievement were compiled from reports submitted by the Education and Testing Department, Detroit Public Schools, and the Michigan Department of Education.
43. Id. at 11, 13-14.
44. Id. at 15.
nantely white and, in many cases, predominantly middle class schools, which are characterized by high levels of academic achievement, and are fully insulated from the problems existing in the Detroit schools. Black political leadership can point to the Detroit school system as a "black system," in which the superintendent, most of the top administrators, and a clear majority of the teachers are black. In this sense, the Detroit school system is a manifestation of "black power." Middle class blacks and middle class whites living in Detroit are not personally affected since most of them send their children either to private schools or to the few "islands of excellence" in the Detroit school system. Thus, in the final analysis, the Detroit school system is a "black" school system run by black professionals for mostly black lower and moderate income children.

But the Detroit school system is not one in which the black children who are enrolled in that system thrive. Close to 60% of these children never graduate from high school. The children that remain in school generally have significantly lower levels of academic achievement than students elsewhere in Michigan. And frequently they attend school in a condition of social disorganization in which the threat of violence is always present.

**What If Milliken Had Been Decided Differently: A Tale of Two School Systems**

Suppose that in *Milliken v. Bradley* the Supreme Court had held that the metropolitan desegregation remedy was proper to eliminate the de jure segregation found to exist in the Detroit school system, and had ordered that the district court's desegregation plan be put into effect. Leaving aside the details of implementation—we may assume for present purposes that there would be a metropolitan authority overseeing the implementation of the plan—we will posit a desegregation plan keyed to the then-existing 75-25 white-black percentage ratio in the school districts covered by the desegregation order. Under this plan, all of the schools within the covered school districts would be desegregated according to specified minimum-maximum racial percentages. In order to minimize the amount of required transportation at the elementary school level, the spread would be larger there than at the secondary school level. Because the white population within the covered school districts is three times larger than the black population, the minimum-maximum racial percentages would be keyed to the black population. Assume the black enrollment at each secondary school to be between 15% and 30% and at each elementary school between 10% and 40%. The students would be assigned to a "home school," the school that they would attend in the absence of a desegregation plan, and would be bused to an "assigned" school for a certain number of years. In other words,
suburban whites would be bused to a school in Detroit, while Detroit blacks would be bused to a school in the suburbs (suburban blacks and Detroit whites would not be bused). Since there are three times more whites than blacks in the covered districts, blacks would have to be bused more years than whites: blacks would be bused for eight or nine years, while whites would be bused for two or three years.

In the above discussion, I essentially "carried over" to the Detroit metropolitan area the desegregation plan that was implemented in the merged Louisville-Jefferson County district following our success on the remand of that case to the Sixth Circuit after *Milliken*. The Louisville-Jefferson County desegregation plan went into effect during the September 1975-76 school year, and with some modifications, remains in effect today. At the time of the plan's implementation, the white-black percentage ratio in the merged district was approximately 80-20. Under the plan, the black enrollment in the secondary schools was between 14% and 24%, and the black enrollment in the elementary schools was between 12% and 44%. Every school in the merged district was desegregated in accordance with these percentage guidelines.45

Those of us who were proponents of metropolitan desegregation in Louisville-Jefferson County at the time the litigation took place predicted that implementation of the desegregation plan would have the following effects: First, the desegregation plan would be stable in the sense that it would not produce substantial "white flight" from the merged Jefferson County school system. Second, in the coming years there would be some improvement in the aggregate academic achievement level of the black students, without any decrease in the academic achievement level of the white students. Third, in time, the desegregation plan would be accepted by the community, and there would be community commitment to the maintenance of racially integrated schools.

We maintained that "white flight," which had become a serious problem at those locations where the desegregation plan was limited to the urban school district alone, would not be a problem if the desegregation plan operated on a metropolitan basis. In the first place, metropolitan desegregation closes off the "public school" escape hatch for white parents wishing to avoid racially integrated schools. When the desegregation plan is limited to the urban school district, white parents wishing to avoid racial integration can move (if they can afford it) to adjacent suburban school districts, and white parents moving into the metropolitan area with school age children will move into a suburban school district. Eventually, the

45. The plan was set out and approved by the Sixth Circuit in Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976).
urban school district becomes "black and poorer," as has happened in Detroit. But, when the desegregation plan covers the entire metropolitan area, this "escape hatch" is foreclosed. If white parents in the Louisville area wanted to avoid desegregation but still send their children to public schools, they would have had to move to the primarily rural adjacent counties in Kentucky or across the river to the southern Indiana suburbs, where the cost of living and the tax rates were much higher than in the Louisville area. Few of the white parents chose this alternative. The other alternative would be to enroll the children in private schools, as most middle class parents, black and white, who live in Detroit, have done.

This did not happen in Louisville, which brings us to the more important point in regard to "white flight" and metropolitan desegregation. Metropolitan desegregation significantly reduces the motivation of white parents to send their children to private schools, for the simple reason that their children will be attending majority white public schools. Experience indicates that "white flight" is directly related to the black percentage of the school system and to the proportion of white students who must be reassigned to schools located in black residential areas. This being so, "white flight" is most pronounced in urban school systems surrounded by accessible white suburbs and is least pronounced in large metropolitan systems surrounded by minimally developed rural areas. Thus, in the Louisville situation, since all of the white children would be attending majority white schools, we anticipated that "white flight" would be minimal, and we were proven to be correct. A decade after


47. As Professor Rossell noted:
Metropolitan plans, or countywide plans, all other things being equal, show less white flight in response to school desegregation than city-only plans. There are three reasons for this. First, because countywide plans incorporate suburban areas (where blacks are typically underrepresented), they have a smaller proportion of students in their school system who are black than most city school districts. Second, the costs of residential relocation to a more segregated school district are greater. Third, countywide school districts contain the suburban amenities that prompt middle-class suburbanization in the first place, and thus the "pull" factors stimulating movement out of the school district do not operate with the same intensity as in the city school districts.

48. The "white flight" that did occur was primarily to private schools. See
desegregation, the overall black population of the Jefferson County school system stood below 30%, reflecting normal demographic change.\footnote{49}{Dr. Armor, who strongly maintains that mandatory desegregation is counterproductive because it produces “white flight,” found that there was “white flight” to private schools in Louisville-Jefferson County during the first two years of the plan’s operation. Armor determined “white flight” by comparing the enrollment projection with the actual enrollment. According to Armor’s data, the actual white enrollment of the merged Jefferson County system in 1977 was approximately 82,000 students, compared to a projected enrollment of approximately 97,000 students, while the private schools gained 11,000 students over projected enrollment for that year. \textit{Id.} However, black enrollment in the Jefferson County school system also declined, indicating a decline in the overall enrollment of the school system due to demographic factors.}

This brings us to the relationship between school desegregation and academic achievement. We predicted that, as a result of desegregation, the aggregate academic achievement level of black children attending merged school systems would increase, while the academic achievement level of the white children would remain unaffected. My experience as a lawyer representing black parents in school desegregation cases has left me with no doubt that the primary reason black parents want their children to attend racially integrated schools is that the parents are convinced that their children generally will perform better academically in racially integrated schools than they would if they were attending racially identifiable black schools. The data that is available indicates that black parents are correct in their belief. Black children who are in fact attending racially integrated schools perform better academically—as measured by performance on standardized academic achievement tests—than black children who are in fact attending racially identifiable black schools. The data also indicate that attendance at racially integrated schools in practice does not have an adverse effect on the academic achievement of white students, although many white parents refuse to believe this.\footnote{50}{According to Professor Hawley, the following generalizations can be de-}
Sociologists and educators debate the existence of any correlation between racial integration as such and the academic achievement of black children. Black leaders who question the efficacy of racial integration in the schools argue that it is "racist" to assume that black children "need white children around in order to be able to learn."\textsuperscript{51} Academic researchers have argued that it is not possible to isolate the effect of racial integration from the other factors that influence the academic achievement of black children. As Professor Eleanor Wolf noted:

There is little research to demonstrate the effects of various kinds of classroom composition, uncontaminated by other differences, upon the academic performance of children who begin school at various levels of scholastic proficiency. Some of the busing efforts now in effect should generate such findings, but most attempts to make these programs succeed have incorporated a variety of educational components in addition to greater classroom heterogeneity. This mix makes it difficult or impossible to know the cause of any enhancement in learning that might be found.\textsuperscript{52}

\textsuperscript{51}From a personal standpoint, I am reluctant to take too seriously the opposition of any black leader to racially integrated schools unless that person's own children are attending racially identifiable black schools.

\textsuperscript{52}E. WOLF, \textit{supra} note 27, at 136. Professor Wolf notes that while the opinion of District Judge Roth in \textit{Milliken}, 338 F. Supp. 582, did not refer to any educational harm caused to black children from attendance at racially identifiable black schools or to any educational benefits that would result from attendance at racially integrated schools, he was "intensely interested" in the testimony dealing with the effect of racial integration on the academic achievement of black students. E. WOLF, \textit{supra} note 27, at 126. "[Judge Roth's] final remedy order was such a striking contrast to his expressed pre-trial views on involuntary integration that one must conclude that this testimony had a profound effect on his thinking." \textit{Id}. 
Professor Wolf clearly is correct in her assessment. There is no evidence suggesting that the higher achievement level of black children attending racially integrated schools is due to the racial mixture or to the presence of white children in the school as such.

Nor is there any logical reason to conclude that there is any correlation between race and academic achievement. The primary determinant of academic achievement, as measured by performance on standardized academic achievement tests, is the social class background of a child: children coming from economically advantaged backgrounds in the aggregate will have substantially higher levels of academic achievement than children coming from economically disadvantaged backgrounds. The primary school factor influencing academic achievement is the social class composition of the school: schools in which economically advantaged children predominate will in the aggregate have higher levels of academic achievement than schools in which economically disadvantaged children predominate. These conclusions, based on a review of the then available data, were set forth in the now famous Coleman Report, published in 1966.53 The Coleman Report posited that economically disadvantaged students' attendance at schools in which economically advantaged students predominated should have a positive effect on the formers' academic achievement: their level of academic achievement in the aggregate would be higher than it would be if the same students were attending schools in which economically disadvantaged students predominated, although in the aggregate it would not be as high as that of the economically advantaged students.54

Thus, the Coleman Report concluded that the school's social class composition, rather than its racial composition, was significant in affecting the academic achievement of black children attending racially integrated schools:

The apparent beneficial effect of a student body with a high proportion of white students comes not from racial composition per se, but from the better educational background and

54. It has been contended that this point was only hypothesized in the Coleman Report since the data did not measure this effect. See E. WOLF, supra note 27, at 134-36. Nonetheless, the hypothesis seems very reasonable. The educational atmosphere and teacher expectations in a classroom in which advantaged students predominate frequently may differ from that in a classroom in which disadvantaged children predominate. An improved educational atmosphere and higher teacher expectations could be expected to influence positively the academic achievement of economically disadvantaged children.
higher educational aspirations that are, on the average found among white students. The effects of the student body environment upon a student's achievement appear to lie in the educational proficiency possessed by that student body, whatever its racial or ethnic composition.  

So, if a racially identifiable black school was populated predominantly by economically advantaged black children, the children attending that school in the aggregate would be expected to have levels of academic achievement comparable to that of children attending schools populated predominantly by economically advantaged white children.  

The problem, of course, is that there are simply not many economically advantaged black children in the urban public school systems. Given the predominant class character of the black population, resulting from the enormous economic disparities between blacks as a group and whites as a group, a racially identifiable black school is likely to be a predominantly economically disadvantaged school as well. By the same token, when school desegregation is imposed in accordance with the black-white school population in a metropolitan area, the great majority of the schools will be predominantly white and thus predominantly middle class schools.  

56. A number of the Southfield public schools, including Southfield High School (which my daughter attends) are now majority black schools. The black population of Southfield is predominantly middle class, and, in fact, according to the 1980 census, black family income in Southfield exceeds white family income. There has been no decline in the aggregate academic achievement levels of the Southfield schools that have become majority black schools. Indeed, as the black population of the Southfield public schools has increased, the aggregate performance of Southfield students on the Michigan Educational Assessment Program test has increased as well. In 1977, when the school system was approximately 17% black, the passing rate for fourth grade students on the MEAP reading tests was 62.2% and on the MEAP mathematics test was 85.3%. In 1986, when the school system was approximately 37% black, the passing rate on the reading tests was 95.3% and on the mathematics test was 95.3%. On the seventh grade level, the passing rate on the reading tests had increased from 65.6% in 1977 to 90.3% in 1986, and on the mathematics tests from 61.9% in 1977 to 85.6% in 1986. On the tenth grade level, the passing rate on the reading tests had increased from 75.1% in 1979 (the earliest year for which figures are available) to 88% in 1986, and on the mathematics tests from 62.1% in 1979 to 85.3% in 1986. This data was furnished by the Southfield Public Schools Superintendent's Office.  
57. Depending on how the schools are paired or clustered, some of the schools (all of which would be majority white) would be predominantly lower-middle class, some would be predominantly middle-middle class, and some would be predominantly upper-middle class.  

A review of 93 studies dealing with the academic achievement of minority students following desegregation led the reviewers to conclude that "the metropolitan desegregation plans analyzed show stronger achievement effects than other studies."
In addition, there is the old adage, "Where you can segregate people, you can discriminate against them." Frequently, within a school district, the racially identifiable black schools would receive the "short end of the educational stick" in terms of teacher qualifications, facilities, and curriculum. And, as is clear in the Detroit metropolitan area, often the predominantly black urban district has less available funds per student than the surrounding predominantly white suburban districts. Whatever else school integration does, it forces a sharing of available educational and financial resources between black and white students.

It should now be clear why black parents are correct in their belief that attendance at racially integrated schools is likely in the aggregate to improve the academic achievement levels of their children over what they would be if their children were attending racially identifiable black schools. Schools in which white children predominate are in fact generally educationally superior to schools in which black children predominate. So, if black children are attending schools that are also attended by a substantial number of white children, these black children are likely to perform better academically than they would if they were attending racially identifiable black schools.

The two plausible explanations advanced by the reviewers were that metropolitan desegregation "represents the most complete form of socioeconomic desegregation," and that "suburban school districts, spared the conflict and tension that surround the operation of many central-city school districts, have been able to recruit stronger teaching staffs and better principals and provide a more effective administrative environment for their schools. This latter observation also carries over upon the creation of a metropolitan district or upon the reassignment of minority students to suburban schools. Crain & Mahard, Minority Achievement: Policy Implications of Research, in Effective School Desegregation 55, 72-74 (W. Hawley ed. 1981).

58. The Detroit school district has one of the lowest tax bases in relation to the number of its students in the metropolitan area and in fact in the entire state. In the 1981-82 school year, the tax base (State Equalized Valuation of Property per Student, or SEVPP) for Detroit was $23,130, compared with $120,599 for Dearborn, and $93,970 for Grosse Pointe. During that year, Detroit, which had approximately the same tax rate as Grosse Pointe and a lower tax rate than Dearborn, had $2214 per student, compared with $3179 per student for Dearborn, and $3287 per student for Grosse Pointe. Of 39 Wayne County school districts that year, Detroit ranked 32nd in terms of funds available for the education of each student. The disparities have not been reduced in succeeding years.

In the 1985-86 school year, for example, Detroit had $3168 per student, compared with $4137 per student for Dearborn, and $4982 per student for Grosse Pointe. In Detroit, the average teacher earned $30,795 and had 24 pupils. In Dearborn, the average teacher earned $33,860 and had 18 pupils. In Grosse Pointe, the average teacher earned $37,090 and had 19 pupils. And in Southfield, where the aggregate performance of the students on the Michigan Educational Assessment Program has increased as the black population of the school system has increased, the average teacher earned $36,511 and had 17 students. See Layoffs Began in School Strike, Detroit Free Press, Sept. 2, 1987, at 1.
In a comprehensive review of the various studies of the academic achievement of black children attending racially integrated schools, Crain and Mahard arrived at the following "real world" conclusion:

All else being equal, will the mixing of races alone result in higher black achievement? That question cannot be answered, because in the real world desegregation is never an "all else being equal" situation. Desegregation sometimes results in better curricula or facilities; it often results in blacks having better trained or more cognitively skilled teachers; it is frequently accompanied by a major effort to upgrade the quality of education; and it almost always results in socioeconomic desegregation. When desegregation is accompanied by all of these factors, it should not be surprising that there are immediate achievement gains half to two-thirds of the time.\(^{59}\)

In the "real world" then, attendance at racially integrated schools has a positive effect on the aggregate academic achievement of black children. This is why, in my experience, most black parents, if given a choice, would rather have their children attending racially integrated schools than racially identifiable black schools. The aggregate academic achievement level of black children attending racially integrated schools will not be nearly as high as the aggregate academic achievement level of white children attending those schools—given the difference in the predominant class composition of the black and white populations—but it is likely to be significantly higher than it

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\(^{59}\) Crain & Mahard, *Desegregation and Black Achievement: A Review of the Research*, 42 Law & Contemp. Probs. 17, 49 (1978). In a subsequent analysis of these and other studies, the authors noted that two main findings consistently appear in all the studies: (1) "minority students in predominantly Anglo schools score higher on achievement tests;" and (2) "this does not seem to be because of the ‘whiteness’ of the school but because predominantly white schools have student bodies with the highest socioeconomic status." *Id.* at 56. The authors also found that "the beneficial effects of desegregation take place during the very earliest primary school grades," so that students desegregated after that time "inadequately represent the true effects of desegregation." *Id.* at 61. There is also a correlation between the white-black percentage of the school and black academic achievement. There must be a "critical mass" of black students in the school: the academic achievement level of black students was lowest in the schools with the smallest black population. When the black percentage is too low, black students may perceive the school environment as being hostile to blacks. On the other hand, once that "critical mass" is present, the academic achievement of black students is directly related to the percentage of white students in the school—the greater the number of white students, the higher the academic achievement of the black students. These results show why the academic achievement of black students is maximized by metropolitan desegregation. "It is only with metropolitan desegregation that one can be guaranteed a large enough population of white students to provide for predominantly (but not overwhelmingly) white student bodies." *Id.* at 74-76.
would be if those same black children were attending racially identifiable black schools.60

As we predicted, this is what happened in Louisville. Not only did the academic achievement scores of black students improve in relation to those of white students, but the academic achievement scores of both black and white students improved in relation to national norms. The improved academic achievement of black students, as would be expected, was greatest at the elementary level, since these children were starting their educational experience in desegregated schools.61 For example, from 1975 to 1977, the reading level of black second graders improved from the twenty-fifth to the thirty-fourth percentile, while the reading level of white second graders im-

60. The numerous studies of the relationship between desegregation and the academic achievement of black students do not always focus on this point of comparison. Many studies look for a reduction in the aggregate academic achievement gap between black and white students, and when this reduction is not shown to exist, conclude that desegregation does not improve the academic achievement of black students. Perhaps the reason for the disagreement among the researchers is that they are trying to measure different things. For a summary of the different studies commissioned by the National Institute of Education, see Ascik, An Investigation of School Desegregation and Its Effects on Black Student Achievement, AM. EDUC., Dec. 1984, at 15.

Perhaps the more relevant inquiry, which some researchers are now making, concerns the optimum setting for maximizing the academic achievement of black children and the effectiveness of school desegregation. See Hawley, supra note 50, at 145. Professor Hawley contends that the following policies will establish this optimum setting:

[1] Assign students so that schools and classrooms are neither predominantly white nor predominantly black. . . .

[2] Assign to each classroom a sizable number of students who perform at or above grade level. . . .

[3] Encourage substantial interaction among races both in academic settings and extracurricular activities. . . .

[4] Eschew academic competition, rigid forms of tracking, and ability grouping that draws attention to individual and group achievement differences correlated with race. . . .

[5] Recruit and retrain teachers who are relatively unprejudiced, supportive, and insistent on high performance and racial equality. . . .

[6] Recruit and retrain principals who are supportive of desegregation and exert leadership in that direction. . . .

[7] Involve parents at the classroom level in actual instructional or learning activities. . . .

[8] Initiate programs of staff development that emphasize the problems relating to successful desegregation. . . .


[10] Desegregate students early, in kindergarten if possible.

Id. at 154-57 (italics omitted).

61. Recall that in the Detroit school system, the educational gap between Detroit students, both in relation to other Michigan students and in relation to national norms, increases with the number of years of school the students have attained.
proved from the forty-fifth to the forty-seventh percentile, resulting in a nine point gain in absolute terms and a thirteen point gain in relation to whites. Black third graders rose from the thirtieth to the fortieth percentile, while white third graders rose from the fifty-fourth to fifty-eighth percentile, while white third graders rose from the fifty-fourth to fifty-eighth, leading to a ten point gain in absolute terms and a six point percentile gain in relation to whites. In the fifth grade, black students went from the twenty-fifth to the thirty-sixth percentile, while white students improved from the fiftieth to the fifty-fourth percentile, an eleven point gain in absolute terms and a seven point gain in relation to whites.\footnote{One of the most positive outcomes of metropolitan desegregation in the Louisville area then has been the improved academic achievement levels of black children, and the improved academic achievement levels of both black and white children in relation to national norms.}

Our third prediction, that in time there would be community acceptance of the desegregation plan, ties in with the improved academic achievement of both black and white students following the implementation of the desegregation plan. For many reasons, including the proportionate availability of resources, the Kentucky educational system lagged behind that of other states such as Michigan. This fact was reflected in the academic achievement scores of Kentucky students in relation to national norms. Yet, once desegregation became a reality in Louisville-Jefferson County and the available resources were shared equally between black and white students, there was a commitment to “making the system work” in that school district. The resulting educational advantages have been enjoyed by all the students and are reflected in higher academic achievement scores. In 1976, for example, not one of the twelve grades scored above the fiftieth percentile in reading on national standardized tests. Only two grades reached that level in mathematics. By 1981, all grades except one, eleven, and twelve were above the fiftieth percentile in reading. Eight grades were above that level in mathematics.\footnote{As one school administrator put it: “The more years there has been desegregation in the school system, the more improvement there has been in the scores.”}\footnote{Id.}

Today, the desegregation plan remains in effect, and the com-


\footnote{64. Id.}
munity has accepted metropolitan desegregation. The community has debated the changes in the method of student assignment resulting from the school board's efforts to reduce the extent of busing. There is concern that particular schools are "out of compliance with the guidelines." However, all the schools remain racially integrated, and the maintenance of racial integration is a "given" in any proposal for change. The prevailing attitude is perhaps best summed up in a 1980 editorial in the *Louisville Times*, when the desegregation plan had been in effect for five years: "This is an invitation to President-elect Reagan to inspect the Jefferson County schools as soon as possible. They give lie to his glib pronouncement that 'busing has been a failure.' In what way? Educationally? Not in Jefferson County." In Louisville-Jefferson County today, black and white children go to school together, which is, as Justice Marshall contended in *Milliken*, "in the final analysis, what desegregation of the public schools is all about."

Since I now live in the Detroit metropolitan area, it should not be surprising that I would wonder what things would be like here today if *Milliken* had been decided differently, and if a metropolitan desegregation plan had gone into effect here in 1975, as it did in Louisville-Jefferson County. I realize that comparisons are necessarily quite speculative. Numerous persons that I have spoken to about this matter have insisted: "Detroit is different from Louisville," or, "It never would have worked in Detroit," or, "All the whites that could have afforded to would have pulled their children out of the public schools."

Perhaps this would have been so, but perhaps not. The same basic factors that were present in Louisville-Jefferson County at that time were also present in Detroit. The overall tri-county public school population at the time of *Milliken* was 70% white and 30% black, and all of the schools included in the desegregation plan would have been predominantly white (and in many instances predominantly middle class) schools. In 1975, the Detroit public schools were not in a condition of social disorganization, and there is no reason to believe that in general white parents would object to their children being bused to schools in Detroit any more than white parents in Jefferson County objected to their children being bused to schools in Louisville. Particularly, this would be so if, as in Louisville-Jefferson County, white students would have to be bused for only two or three years, and if the secondary schools, at least, would have very similar racial compositions regardless of their location. Ex-

65. It has been contended that the busing burden is being disproportionately borne by black students.
67. 418 U.S. at 802 (Marshall, J., dissenting).
trapolating from the Louisville-Jefferson County experience, it is at least arguable that there would not have been substantial white flight from the public schools in the Detroit metropolitan area, and that the public schools here would remain racially integrated today.

If metropolitan desegregation had occurred, it is also highly unlikely that the Detroit public schools would be experiencing the condition of social disorganization that they are experiencing today. Stated simply, there would not be “Detroit public schools” as we know them. There would not be, as there are today in Detroit, schools populated almost entirely by low and moderate income children, many of whom fall further behind in academic achievement with each additional year of schooling they receive. In this circumstance, it should not be surprising that “the streets have carried over into the schools,” and that the “culture of poverty” sets the norm for the school setting. If all the schools in the Detroit metropolitan area had been desegregated in 1975, the schools in Detroit, like the schools in the rest of the metropolitan area, would reflect the socioeconomic composition of the entire area, and would not be attended predominantly by economically disadvantaged children. Not only would the condition of social disorganization likely be absent, but extrapolating from the Louisville-Jefferson County experience and the experience elsewhere, we would also expect to see improved aggregate levels of academic achievement on the part of the children now attending the Detroit schools.

Finally, metropolitan desegregation might have had some influence on the demographics of the Detroit metropolitan area. Middle class white families with school age children would not be deterred from moving into the City of Detroit, because such a choice would not necessarily mean that they have opted for private schools. Indeed, their children would “stay in place,” and would not have to be bused for desegregation purposes.68 So too, middle class black families, tired of sending their children to private schools, would not have to move to the suburbs for “good” public schools, as some are now doing. In short, housing choices would not be largely determined for families with school age children by school considerations, as they often are now. Ideally people could have chosen to live in the City of Detroit and still have their children attend “good” public schools in the Detroit metropolitan area.

This is not what happened, and as far as the public schools in the Detroit metropolitan area are concerned, Justice Marshall’s

68. In Louisville-Jefferson County, the Kentucky Commission on Human Rights had some success in promoting housing integration by “publicizing the school attendance zones that families could move into to keep their children from being bused, since children moving into opposite race neighborhoods were excluded from busing.” Rossell & Hawley, supra note 46, at 177.
prophecy in his *Milliken* dissent has proven to be strikingly correct. The effect of the *Milliken* decision in Detroit has indeed been "to allow our great metropolitan areas to be divided up each into two cities—one white, the other black." 69

69. 418 U.S. at 815 (Marshall, J., dissenting). This article ends on a note of despair. The Detroit school system is a school system for the black urban underclass, characterized by low levels of academic achievement, a very high dropout rate, and social disorganization in the schools. Solutions to the overwhelming problems of the Detroit school system today are complex and would require a degree of commitment and sacrifice from all segments of the Detroit metropolitan community that simply cannot be found. If *Milliken* had been decided differently, the history of the Detroit metropolitan area might have turned out to be very different as well.