

# The Legal Foundations of School Segregation— A Comparative Activity

*For use in conjunction with “Bush v. Orleans Parish School Board and the Desegregation of New Orleans Schools,” by Davison M. Douglas, available at <http://www.fjc.gov/history/home.nsf>.  
A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.*

## Activity Objectives

The *Bush v. Orleans Parish School Board* case involved the struggle to end legally mandated segregation in the New Orleans public schools. Long after schools in New Orleans and other Southern school districts were desegregated, many communities throughout the United States continued to face persistent racial segregation in public schools. By comparing the *Bush* case with later cases involving the public schools of Denver, Colorado, and Detroit, Michigan, students will understand continuing debates on the courts’ authority to impose legal remedies to reduce or eliminate persistent patterns of public school segregation.

## Essential Questions

- Under what circumstances have the federal courts required local school districts to ensure racial integration of public schools?
- Did a clear pattern of school desegregation violate the Equal Protection clause of the Fourteenth Amendment even if that segregation had not been mandated by state or local law?
- What role have federal courts played in the design and supervision of desegregation plans?

## Legal Issues Raised by the Cases

These three cases—*Bush v. Orleans Parish School Board*, *Keyes v. Denver*, and *Milliken v. Bradley*—were among the many that presented the federal courts with questions about the origins and persistence of school segregation and what conditions merited the federal courts’ intervention in local school administration to ensure equal protection of students.

## Estimated Time Frame

Three 50-minute class periods and one out-of-class writing assignment.

## Recommended Prep Work

Students should be familiar with the narrative overview of “*Bush v. Orleans Parish School Board and the Desegregation of New Orleans Schools*” by Davison M.

Douglas, pp. 1–11 (all page citations refer to the PDF version of the unit, available online at <http://www.fjc.gov>), and students should have engaged in discussion of the case.

Students should also be familiar with (1) the Supreme Court’s two holdings in *Brown v. Board of Education* (the 1954 decision finding segregation of public schools in violation of the Equal Protection Clause of the Fourteenth Amendment and the 1955 decision ordering implementation of the Court’s 1954 decision “with all deliberate speed”) and (2) the language of the Fourteenth Amendment.

## Description of the Activity

### *Activity Overview*

Students will study the *Bush v. Orleans* case and two Supreme Court decisions related to school desegregation in states or municipalities that had not mandated segregated schools. Student will understand the ways in which courts determined if a demonstrated pattern of racial segregation of schools violated the Equal Protection Clause of the Fourteenth Amendment and under what conditions the federal courts were or were not willing to order local school districts to take action to desegregate local schools.

### *Day One*

Students will research and discuss the plaintiffs’ original brief and two of the federal court decisions related to *Bush v. Orleans Parish School Board*.

Divide the class into four groups and assign documents as follows:

- Group One: Original Complaint of Plaintiffs, filed in the U.S. District Court for the Eastern District of Louisiana, September 4, 1952 (pp. 55–57)
- Group Two: *Brown v. Board of Education*, excerpt (Student Handout 1)
- Group Three: Judge J. Skelly Wright’s decision, February 15, 1956 (pp. 58–60)
- Group Four: U.S. Court of Appeals for the Fifth Circuit decision, March 1, 1957 (pp. 63–64)

Each group will prepare a report to the whole class on the assigned document. The class will then discuss issues presented by the *Bush v. Orleans* case.

Group One should address the following questions:

- Who are the plaintiffs, and who do they represent?
- According to the plaintiffs who filed the suit, how were their rights to equal protection of the laws denied?
- What evidence of inequality did the plaintiffs present?

- What questions did the plaintiffs present to the court?
- What did the plaintiffs ask the court to do?

Group Two should address the following questions:

- By what standards does the Supreme Court determine whether access to public education is covered by the Equal Protection Clause of the Fourteenth Amendment?
- Does the Supreme Court consider access to public education a right of citizens? Why or why not?
- What precedents does the Supreme Court cite for its decision in *Brown v. Board*?
- Why are racially segregated schools unconstitutional, even if all school facilities are equal?

Group Three should address the following questions:

- Who are the plaintiffs and the defendants?
- What did Judge Wright say was the complaint of the plaintiffs?
- What was the response of the school board to the plaintiffs' suit?
- What did Judge Wright order the school board to do?
- What factors did Judge Wright take into consideration in anticipating the timetable for the desegregation of New Orleans public schools?

Group Four should address the following questions:

- On what grounds had the Orleans Parish school board appealed Judge Wright's decision of February 1956? Did the court of appeals agree?
- What did the school board say was the basis for the assignment of pupils in the New Orleans public schools? How did the court respond?
- What did the court consider reasonable reasons for delaying the desegregation of schools?
- According to the court of appeals, when and under what authority was it permissible for the federal courts to restrain the actions of state and local governments?

Discussion topics for the whole class:

- What were the historical roots of school segregation in New Orleans?
- What authority did the federal courts have to regulate local school affairs? What were the limits of that authority?
- Based on the Supreme Court's opinion in *Brown*, Judge Wright's decision of February 1956, and the Fifth Circuit Court of Appeals' decision of March 1957, what would the Orleans school board need to demonstrate to be in compliance with the Constitution and the several court decisions?

- Did the Supreme Court's decision in *Brown* and its enforcement in New Orleans have any implications for school districts that did not mandate racial segregation but were characterized by clear and persistent patterns of racial segregation?

### *Day Two*

Students will research and discuss *Keyes v. Denver*, a Supreme Court case decided in 1973. A summary of the case and excerpts from the justices' opinions are provided in Student Handout 2.

Divide the class into four groups, and assign the opinions in this case as follows:

- Group One: Justice William Brennan's opinion for the Court
- Group Two: Justice William O. Douglas's concurring opinion
- Group Three: Justice Lewis Powell's opinion concurring in part and dissenting in part
- Group Four: Justice William Rehnquist's dissenting opinion

Each group will prepare a report to the whole class on the assigned document. The class will then discuss issues presented by *Keyes v. Denver*.

Group One should address the following questions:

- On what basis does Justice Brennan conclude that the Denver public school system was a dual system comparable to those once mandated by law in Southern states?
- What government actions in Denver promoted or perpetuated the racial segregation of public schools?
- What, according to Justice Brennan, distinguishes *de jure* from *de facto* segregation?
- What conclusions does the Court draw from the evidence of the local government's attempt to segregate by race the schools in one part of the city's school system?

Group Two should address the following questions:

- Why does Justice Douglas reject the distinction between *de jure* and *de facto* segregation?
- What does Justice Douglas say the Constitution prevents state governments from doing in regard to neighborhood policies?
- How can governments promote school segregation in the absence of laws mandating or permitting separate facilities for different races?

Group Three should address the following questions:

- In what ways does Justice Powell disagree with the majority opinion written by Justice Brennan?
- Why, according to Justice Powell, has school desegregation in the North lagged behind the desegregation in the South?
- What will be the impact of the Supreme Court's acceptance of the distinction between *de jure* and *de facto* segregation?
- What does Justice Powell believe should be the guiding principle in school desegregation cases?

Group Four should address the following questions:

- Why should the Supreme Court adhere to the distinction between *de jure* and *de facto* segregation?
- According to Justice Rehnquist, how does the distinction between *de jure* and *de facto* segregation limit the Supreme Court's authority in this case?
- What does Justice Rehnquist say was the motivation of the majority opinion for the Supreme Court?

Ask each group to report back to the class on the reviewed opinion. After the groups have reported, discuss the following questions as a class:

- What was the pattern of racial segregation in Denver public schools in 1973?
- What were the historical roots of school segregation in Denver?
- What authority did the federal courts have to regulate local school affairs? What were the limits of that authority?
- On what points might all four of the justices agree in regard to the *Keyes v. Denver* case?
- What effect did the distinction between *de jure* and *de facto* segregation have in the outcome of the case?

### *Day Three*

Students will research and discuss *Milliken v. Bradley*, a Supreme Court case decided in 1974. A summary of the case and excerpts from the justices' opinions are provided in Student Handout 3.

Divide the class into four groups, and assign the opinions in this case as follows:

- Group One: Chief Justice Burger's opinion for the Court
- Group Two: Justice William O. Douglas's dissenting opinion
- Group Three: Justice Byron White's dissenting opinion
- Group Four: Justice Thurgood Marshall's dissenting opinion

Each group will prepare a report to the whole class on the assigned document. The class will then discuss issues presented by the *Milliken v. Bradley* case.

Group One should address the following questions:

- What does Chief Justice Burger say was the intention of the decisions of the district court and the court of appeals?
- Why, according to Chief Justice Burger, should the Supreme Court respect local school district boundaries?
- What criteria does Chief Justice Burger cite for a federal court's desegregation order?
- Why does Chief Justice Burger think it would be unacceptable to include suburban school districts in a desegregation order in this case?

Group Two should address the following questions:

- According to Justice Douglas, what about the Michigan education system allows the courts to issue a desegregation order encompassing Detroit and the metropolitan area?
- What examples does Justice Douglas cite of state action governed by the Fourteenth Amendment?
- How, according to Justice Douglas, do states promote segregated schools in the absence of laws mandating that segregation?
- What parallels does Justice Douglas see between *Milliken v. Bradley* and *Brown v. Board of Education*?

Group Three should address the following questions:

- What does Justice White think is the reason for the extent of school segregation in Detroit?
- What, according to Justice White, is lacking in the desegregation remedy ordered by the Supreme Court's majority?
- Why is desegregation of schools so important to Justice White?
- What does White believe to be the difference between the *Milliken* decision and earlier Supreme Court decisions regarding school desegregation?

Group Four should address the following questions:

- What does Justice Marshall say is the importance of Supreme Court precedents in this case? What precedents might he have had in mind?
- Why, according to Justice Marshall, is the State of Michigan responsible for the segregation of Detroit schools?
- How had the state obstructed earlier opportunities for desegregation? What policies had ensured segregated schools in Detroit?

- How does Justice Marshall respond to Chief Justice Burger’s arguments regarding school district boundaries? What effect did the distinction between *de jure* and *de facto* segregation have in the outcome of the case?

Ask each group to report back to the class on the reviewed opinion. After the groups have reported, discuss the following questions as a class:

- Why might three of the justices have decided to submit separate dissenting opinions?
- What effect did the distinction between *de jure* and *de facto* segregation have in the outcome of the case?
- How did the majority’s opinion in *Milliken* differ from that in *Keyes*?
- Did the *Milliken* decision limit the legacy of *Brown v. Board of Education*, as Justice Marshall asserted?

### Debrief and Wrap-up

Drawing from a reading of the three cases, students will write a brief paper (3–5 pages) responding to the following questions:

- What were some of the historical roots of public school segregation in the United States in the three decades following the Second World War? How did the federal courts make distinctions between the different sources of segregation, and what effect did those distinctions have on the court-ordered desegregation plans?

### Assessment

- Informal assessment occurs within all class activities, including the small-group meetings and large-group reports and discussions.
- Formal assessment is engaged at the end of the unit as students prepare the final paper.

### Alternative Modalities and Enrichment Activities

- Have students write an opinion piece supporting or disputing the claim that student diversity is a compelling interest for elementary and secondary schools.
- Have students write an opinion piece on whether the distinction between *de jure* and *de facto* segregation should restrict the federal courts’ authority to impose desegregation plans on local school districts.
- Have students research the Supreme Court’s 2007 decision in *Parents Involved in Community Schools v. Seattle School District No. 1, et al.*, and compare that decision to the *Milliken* and *Keyes* decisions.

## Involving a Judge

Invite a judge to visit your classroom to discuss the challenge that federal courts face when they supervise the implementation of court orders to state and local governments. Judges might also discuss how they approach cases involving controversial social policies.

## Standards Addressed

*U.S. History Standards (Grades 5–12)*

Era 9—Postwar United States (1945 to early 1970s)

*Standard 4:* The struggle for racial and gender equality and the extension of civil liberties.

*Standard 4A:* The student understands the “Second Reconstruction” and its advancement of civil rights. Therefore, the student is able to:

Explain the origins of the postwar civil rights movement and the role of the NAACP in the legal assault on segregation.

Explain the resistance to civil rights in the South between 1954 and 1965.

*Standards in Historical Thinking, Standards 1–5*



## Student Handout 1

Supreme Court opinion (excerpts) in *Brown v. Board of Education of Topeka et al.*, 347 U.S. 483 (1954)

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In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt v. Painter*, *supra*, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on “those qualities which are incapable of objective measurement but which make for greatness in a law school.” In *McLaurin v. Oklahoma State Regents*, *supra*, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: “. . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.” Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . .

We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

## Student Handout 2

Case summary and justices' opinions: *Keyes v. Denver*, 413 U.S. 189 (1973)

### Case Summary

*Keyes v. Denver* was the first major challenge to segregation of an urban school district outside the South.

The school system in Denver, Colorado, had never been explicitly segregated by law. A federal district court found, however, that the school board had deliberately engaged in a series of actions to racially segregate schools in the Park Hill area of the city. These actions amounted to *de jure* segregation. The district court ordered that the board take action to desegregate the Park Hill schools.

Other areas of the Denver school district, particularly in the core city area, were also heavily segregated by race. The district court held that a finding of purposeful and systematic segregation in one area of the city did not in itself impose on the school board an affirmative duty to eliminate segregation throughout the school district. Instead, plaintiffs had to make a fresh showing of *de jure* segregation in each area of the city for which they sought relief.

### Justices' Opinions

*Opinion of the Court, by Justice William Brennan*

This is not a case, however, where a statutory dual system has ever existed. Nevertheless, where plaintiffs prove that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the students, schools, teachers, and facilities within the school system, it is only common sense to conclude that there exists a predicate for a finding of the existence of a dual school system. Several considerations support this conclusion. First, it is obvious that a practice of concentrating Negroes in certain schools by structuring attendance zones or designating "feeder" schools on the basis of race has the reciprocal effect of keeping other nearby schools predominantly white. Similarly, the practice of building a school—such as the Barrett Elementary School in this case—to a certain size and in a certain location, "with conscious knowledge that it would be a segregated school," has a substantial reciprocal effect on the racial composition of other nearby schools. So also, the use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction, may have a profound reciprocal effect on the racial composition of residential neighborhoods within a

metropolitan area, thereby causing further racial concentration within the schools.

...

Plainly, a finding of intentional segregation as to a portion of a school system is not devoid of probative value in assessing the school authorities' intent with respect to other parts of the same school system. On the contrary, where, as here, the case involves one school board, a finding of intentional segregation on its part in one portion of a school system is highly relevant to the issue of the board's intent with respect to other segregated schools in the system. . . .

Applying these principles in the special context of school desegregation cases, we hold that a finding of intentionally segregative school board actions in a meaningful portion of a school system, as in this case, creates a presumption that other segregated schooling within the system is not adventitious. It establishes, in other words, a *prima facie* case of unlawful segregative design on the part of school authorities, and shifts to those authorities the burden of proving that other segregated schools within the system are not also the result of intentionally segregative actions. This is true even if it is determined that different areas of the school district should be viewed independently of each other because, even in that situation, there is high probability that where school authorities have effectuated an intentionally segregative policy in a meaningful portion of the school system, similar impermissible considerations have motivated their actions in other areas of the system. We emphasize that the differentiating factor between *de jure* segregation and so-called *de facto* segregation to which we referred in *Swann* is *purpose* or *intent* to segregate. Where school authorities have been found to have practiced purposeful segregation in part of a school system, they may be expected to oppose system-wide desegregation, as did the respondents in this case, on the ground that their purposefully segregative actions were isolated and individual events, thus leaving plaintiffs with the burden of proving otherwise. But at that point where an intentionally segregative policy is practiced in a meaningful or significant segment of a school system, as in this case, the school authorities cannot be heard to argue that plaintiffs have proved only "isolated and individual" unlawfully segregative actions. In that circumstance, it is both fair and reasonable to require that the school authorities bear the burden of showing that their actions as to other segregated schools within the system were not also motivated by segregative intent.

*Concurring Opinion of Justice William O. Douglas*

I think it is time to state that there is no constitutional difference between *de jure* and *de facto* segregation, for each is the product of state actions or policies. If a "neighborhood" or "geographical" unit has been created along racial lines by reason of the play of restrictive covenants that restrict certain areas to "the elite,"

leaving the “undesirables” to move elsewhere, there is state action in the constitutional sense because the force of law is placed behind those covenants.

There is state action in the constitutional sense when public funds are dispersed by urban development agencies to build racial ghettos.

Where the school district is racially mixed and the races are segregated in separate schools, where black teachers are assigned almost exclusively to black schools, where the school board closed existing schools located in fringe areas and built new schools in black areas and in distant white areas, where the school board continued the “neighborhood” school policy at the elementary level, these actions constitute state action. They are of a kind quite distinct from the classical *de jure* type of school segregation. Yet calling them *de facto* is a misnomer, as they are only more subtle types of state action that create or maintain a wholly or partially segregated school system.

When a State forces, aids, or abets, or helps create a racial “neighborhood,” it is a travesty of justice to treat that neighborhood as sacrosanct in the sense that its creation is free from the taint of state action.

The Constitution and Bill of Rights have described the design of a pluralistic society. The individual has the right to seek such companions as he desires. But a State is barred from creating by one device or another ghettos that determine the school one is compelled to attend.

*Opinion of Justice Lewis Powell, Concurring in Part and Dissenting in Part*

The situation in Denver is generally comparable to that in other large cities across the country in which there is a substantial minority population and where desegregation has not been ordered by the federal courts. There is segregation in the schools of many of these cities fully as pervasive as that in southern cities prior to the desegregation decrees of the past decade and a half. The focus of the school desegregation problem has now shifted from the South to the country as a whole. Unwilling and footdragging as the process was in most places, substantial progress toward achieving integration has been made in Southern States. No comparable progress has been made in many nonsouthern cities with large minority populations primarily because of the *de facto/de jure* distinction nurtured by the courts and accepted complacently by many of the same voices which denounced the evils of segregated schools in the South. But if our national concern is for those who attend such schools, rather than for perpetuating a legalism rooted in history rather than present reality, we must recognize that the evil of operating separate schools is no less in Denver than in Atlanta.

The Court has chosen, rather, to adhere to the *de facto/de jure* distinction under circumstances, and upon a rationale, which can only lead to increased and in-

conclusive litigation, and—especially regrettable—to deferment of a nationally consistent judicial position on this subject. There is, of course, state action in every school district in the land. The public schools always have been funded and operated by States and their local subdivisions. It is true that segregated schools, even in the cities of the South, are in large part the product of social and economic factors—and the resulting residential patterns. But there is also not a school district in the United States, with any significant minority school population, in which the school authorities—in one way or the other—have not contributed in some measure to the degree of segregation which still prevails. Instead of recognizing the reality of similar, multiple segregative causes in school districts throughout the country, the Court persists in a distinction whose duality operates unfairly on local communities in one section of the country and on minority children in the others.

*Dissenting Opinion of Justice William Rehnquist*

The Court notes at the outset of its opinion the differences between the claims made by the plaintiffs in this case and the classical “*de jure*” type of claims made by plaintiffs in cases such as *Brown v. Board of Education*, and its progeny. I think the similarities and differences, not only in the claims, but in the nature of the constitutional violation, deserve somewhat more attention than the Court gives them.

In *Brown*, the Court held unconstitutional statutes then prevalent in Southern and border States mandating that Negro children and white children attend separate schools. Under such a statute, of course, every child in the school system is segregated by race, and there is no racial mixing whatever in the population of any particular school.

It is conceded that the State of Colorado and the city of Denver have never had a statute or ordinance of that description. The claim made by these plaintiffs, as described in the Court’s opinion, is that the School Board by “use of various techniques such as the manipulation of student attendance zones, schoolsite selection and a neighborhood school policy” took race into account in making school assignments in such a way as to lessen that mixing of races which would have resulted from a racially neutral policy of school assignment. If such claims are proved, those minority students who as a result of such manipulative techniques are forced to attend schools other than those that they would have attended had attendance zones been neutrally drawn are undoubtedly deprived of their constitutional right to equal protection of the laws just as surely as were the plaintiffs in *Brown v. Board of Education* by the statutorily required segregation in that case. But the fact that invidious racial discrimination is prohibited by the Constitution in the North as well as the South must not be allowed to obscure the equally im-

portant fact that the consequences of manipulative drawing of attendance zones in a school district the size of Denver does not necessarily result in denial of equal protection to all minority students within that district. There are significant differences between the proof which would support a claim such as that alleged by plaintiffs in this case, and the total segregation required by statute which existed in *Brown*. . . .

The Court has taken a long leap in this area of constitutional law in equating the district-wide consequences of gerrymandering individual attendance zones in a district where separation of the races was never required by law with statutes or ordinances in other jurisdictions which did so require. It then adds to this pot-pourri a confusing enunciation of evidentiary rules in order to make it more likely that the trial court will on remand reach the result which the Court apparently wants it to reach. Since I believe neither of these steps is justified by prior decisions of this Court, I dissent.

### Student Handout 3

Case summary and justices' opinions: *Milliken v. Bradley*, 418 U.S. 717 (1974)

#### Case Summary

In response to a class-action suit presented by the NAACP and seeking a court order for a desegregated, unitary school district in Detroit, the U.S. District Court of the Eastern District of Michigan found that the actions of the Detroit school board had established school segregation in the city. After reviewing court-ordered plans for desegregation, the district court found that the Detroit-only desegregation plan submitted by the city's school board would not remedy the problem of segregation, and the court ordered a metropolitan-wide plan that included surrounding suburban school districts and required busing of students to ensure desegregation. The Court of Appeals for the Sixth Circuit upheld the essentials of the district court's decision. The Supreme Court then agreed to hear an appeal "to determine whether a federal court may impose a multi-district, areawide remedy to a single-district *de jure* segregation problem absent any finding that the other included school districts have failed to operate unitary school systems within their districts." The Supreme Court's 5–4 decision to reject the metropolitan desegregation plan was the first denial of an NAACP-proposed desegregation plan since the *Brown* decision in 1954.

#### Justices' Opinions

##### *Chief Justice Burger's Opinion for the Court*

Viewing the record as a whole, it seems clear that the District Court and the Court of Appeals shifted the primary focus from a Detroit remedy to the metropolitan area only because of their conclusion that total desegregation of Detroit would not produce the racial balance which they perceived as desirable. Both courts proceeded on an assumption that the Detroit schools could not be truly desegregated—in their view of what constituted desegregation—unless the racial composition of the student body of each school substantially reflected the racial composition of the population of the metropolitan area as a whole. The metropolitan area was then defined as Detroit plus 53 of the outlying school districts.

Here the District Court's approach to what constituted "actual desegregation" raises the fundamental question, not presented in *Swann*, as to the circumstances in which a federal court may order desegregation relief that embraces more than a single school district. The court's analytical starting point was its conclusion that school district lines are no more than arbitrary lines on a map drawn "for political convenience." Boundary lines may be bridged where there has been a constitu-



tional violation calling for interdistrict relief, but the notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. . . . Thus, in *San Antonio School District v. Rodriguez*, 411 U.S. 1, 50 (1973), we observed that local control over the educational process affords citizens an opportunity to participate in decisionmaking, permits the structuring of school programs to fit local needs, and encourages “experimentation, innovation, and a healthy competition for educational excellence.” . . .

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

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

*Dissenting Opinion of Justice William O. Douglas*

We have before us today no plan for integration. The only orders entered so far are interlocutory. No new principles of law are presented here. Metropolitan treatment of metropolitan problems is commonplace. If this were a sewage problem or a water problem, or an energy problem, there can be no doubt that Michigan would stay well within federal constitutional bounds if it sought a metropolitan remedy. In *Bradley v. School Board of City of Richmond*, [affirmed] by an equally divided Court, we had a case involving the Virginia school system where local school boards had “exclusive jurisdiction” of the problem, not “the State Board of Education.” Here the Michigan educational system is unitary, maintained and supported by the legislature and under the general supervision of the State Board of Education. The State controls the boundaries of school districts. The State supervises schoolsite selection. The construction is done through municipal bonds approved by several state agencies. Education in Michigan is a state project with very little completely local control, except that the schools are financed locally, not on a statewide basis. Indeed the proposal to put school funding in Michigan on a statewide basis was defeated at the polls in November 1972. Yet the school districts by state law are agencies of the State. State action is indeed challenged as violating the Equal Protection Clause. Whatever the reach of that claim may be, it certainly is aimed at discrimination based on race.

As I indicated in *Keyes v. School District No. 1 Denver, Colorado*, there is so far as the school cases go no constitutional difference between de facto and de jure segregation. Each school board performs state action for Fourteenth Amendment purposes when it draws the lines that confine it to a given area, when it builds schools at particular sites, or when it allocates students. The creation of the school districts in Metropolitan Detroit either maintained existing segregation or caused additional segregation. Restrictive covenants maintained by state action or inaction build black ghettos. It is state action when public funds are dispensed by housing agencies to build racial ghettos. Where a community is racially mixed and school authorities segregate schools, or assign black teachers to black schools or close schools in fringe areas and build new schools in black areas and in more distant white areas, the State creates and nurtures a segregated school system, just as surely as did those States involved in *Brown v. Board of Education*, when they maintained dual school systems.

*Dissenting Opinion of Justice Byron White*

Finally, I remain wholly unpersuaded by the Court’s assertion that “the remedy is necessarily designed, as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.” In the first place, under this premise the Court’s judgment is itself infirm;

for had the Detroit school system not followed an official policy of segregation throughout the 1950's and 1960's, Negroes and whites would have been going to school together. There would have been no, or at least not as many, recognizable Negro schools and no, or at least not as many, white schools, but "just schools," and neither Negroes nor whites would have suffered from the effects of segregated education, with all its shortcomings. Surely the Court's remedy will not restore to the Negro community, stigmatized as it was by the dual school system, what it would have enjoyed over all or most of this period if the remedy is confined to present-day Detroit; for the maximum remedy available within that area will leave many of the schools almost totally black, and the system itself will be predominantly black and will become increasingly so. Moreover, when a State has engaged in acts of official segregation over a lengthy period of time, as in the case before us, it is unrealistic to suppose that the children who were victims of the State's unconstitutional conduct could now be provided the benefits of which they were wrongfully deprived. Nor can the benefits which accrue to school systems in which schoolchildren have not been officially segregated, and to the communities supporting such school systems, be fully and immediately restored after a substantial period of unlawful segregation. The education of children of different races in a desegregated environment has unhappily been lost, along with the social, economic, and political advantages which accompany a desegregated school system as compared with an unconstitutionally segregated system. It is for these reasons that the Court has consistently followed the course of requiring the effects of past official segregation to be eliminated "root and branch" by imposing, in the present, the duty to provide a remedy which will achieve "the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." It is also for these reasons that once a constitutional violation has been found, the district judge obligated to provide such a remedy "will thus necessarily be concerned with the elimination of one-race schools." These concerns were properly taken into account by the District Judge in this case. Confining the remedy to the boundaries of the Detroit district is quite unrelated either to the goal of achieving maximum desegregation or to those intensely practical considerations, such as the extent and expense of transportation, that have imposed limits on remedies in cases such as this. The Court's remedy, in the end, is essentially arbitrary and will leave serious violations of the Constitution substantially unremedied.

*Dissenting Opinion of Justice Thurgood Marshall*

After 20 years of small, often difficult steps toward that great end, the Court today takes a giant step backwards. Notwithstanding a record showing widespread and pervasive racial segregation in the educational system provided by the State of

Michigan for children in Detroit, this Court holds that the District Court was powerless to require the State to remedy its constitutional violation in any meaningful fashion. Ironically purporting to base its result on the principle that the scope of the remedy in a desegregation case should be determined by the nature and the extent of the constitutional violation, the Court's answer is to provide no remedy at all for the violation proved in this case, thereby guaranteeing that Negro children in Detroit will receive the same separate and inherently unequal education in the future as they have been unconstitutionally afforded in the past.

I cannot subscribe to this emasculation of our constitutional guarantee of equal protection of the laws and must respectfully dissent. Our precedents, in my view, firmly establish that where, as here, state-imposed segregation has been demonstrated, it becomes the duty of the State to eliminate root and branch all vestiges of racial discrimination and to achieve the greatest possible degree of actual desegregation. I agree with both the District Court and the Court of Appeals that, under the facts of this case, this duty cannot be fulfilled unless the State of Michigan involves outlying metropolitan area school districts in its desegregation remedy. Furthermore, I perceive no basis either in law or in the practicalities of the situation justifying the State's interposition of school district boundaries as absolute barriers to the implementation of an effective desegregation remedy. Under established and frequently used Michigan procedures, school district lines are both flexible and permeable for a wide variety of purposes, and there is no reason why they must now stand in the way of meaningful desegregation relief. . . .

To begin with, the record amply supports the District Court's findings that the State of Michigan, through state officers and state agencies, had engaged in purposeful acts which created or aggravated segregation in the Detroit schools. The State Board of Education, for example, prior to 1962, exercised its authority to supervise local schoolsite selection in a manner which contributed to segregation. Furthermore, the State's continuing authority, after 1962, to approve school building construction plans had intertwined the State with site-selection decisions of the Detroit Board of Education which had the purpose and effect of maintaining segregation.

The State had also stood in the way of past efforts to desegregate the Detroit city schools. In 1970, for example, the Detroit School Board had begun implementation of its own desegregation plan for its high schools, despite considerable public and official resistance. The State Legislature intervened by enacting Act 48 of the Public Acts of 1970, specifically prohibiting implementation of the desegregation plan and thereby continuing the growing segregation of the Detroit school system. Adequate desegregation of the Detroit system was also hampered by discriminatory restrictions placed by the State on the use of transportation within Detroit. While state aid for transportation was provided by statute for sub-

urban districts, many of which were highly urbanized, aid for intracity transportation was excepted. One of the effects of this restriction was to encourage the construction of small walk-in neighborhood schools in Detroit, thereby lending aid to the intentional policy of creating a school system which reflected, to the greatest extent feasible, extensive residential segregation. Indeed, that one of the purposes of the transportation restriction was to impede desegregation was evidenced when the Michigan Legislature amended the State Transportation Aid Act to cover intracity transportation but expressly prohibited the allocation of funds for cross-busing of students within a school district to achieve racial balance.