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Readings
Book

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,)
)
Plaintiffs,)
) No. 66 C 1459
v.) 66 C 1460
) (Consolidated)
CHICAGO HOUSING AUTHORITY,)
et al.,)
)
Defendants.)

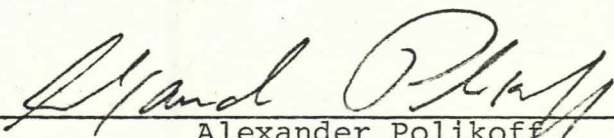
MOTION

NOW COME plaintiffs, by their attorneys, and move the
Court to enter an order,

- (1) Deferring ruling on the proposed final judgment
orders filed on April 26, 1972, by HUD and on
September 25, 1972, by plaintiffs;
- (2) Determining that it is necessary and appropriate
for the Court to consider a metropolitan plan
for relief in this cause; and
- (3) Providing for the preparation of such plans by
HUD and CHA so that there will be no unnecessary
delay in the implementation of the ultimate
orders entered by the Court.

A proposed form of such order is attached hereto and a memorandum in support of this motion is tendered herewith.

Respectfully submitted,



Alexander Polikoff
One of the Attorneys for Plaintiffs

January 29, 1973

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641-5570

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
v.	)	66 C ,460
	)	(Consolidated)
CHICAGO HOUSING AUTHORITY,	)	
et al.,	)	
	)	
Defendants.)	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
FOR A RULING ON THE PROPRIETY OF
CONSIDERING METROPOLITAN RELIEF.

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TABLE OF CONTENTS

	<u>Page No.</u>
INTRODUCTION	1
I. PROCEDURAL SITUATION IN BRADLEY V. MILLIKEN ..	2
II. THE FIVE ORDERS OF THE DISTRICT COURT	3
A. "Ruling on Issue of Segregation," September 27, 1971	3
B. "Findings of Fact and Conclusions of Law on Detroit Only Plans of Desegregation," March 28, 1972	4
C. "Ruling on Propriety of Considering a Metropolitan Remedy to Accomplish Desegre- gation of the Public Schools of the City of Detroit," March 24, 1972	5
D. "Ruling on Desegregation Area and Order for Development of Plan of Desegregation," June 14, 1972	6
E. "Order for Acquisition of Transportation" July 11, 1972	7
III. ACTION OF THE COURT OF APPEALS RESPECTING THE FIVE DISTRICT COURT ORDERS	7
A. Ruling of September 27, 1972	8
B. Ruling of March 28, 1972	8
C. Ruling of March 24, 1972	9
D. Ruling of June 14, 1972	10
E. Order of July 11, 1972	12
IV. THE IMPORT OF BRADLEY V. MILLIKEN FOR THIS CASE	12
APPENDIX ON PARTIES	i
EXHIBITS	

DOROTHY GAUTREAU, et al.,)
)
 Plaintiffs,)
) No. 66 C 1459
 v.) 66 C 1460
) (Consolidated)
 CHICAGO HOUSING AUTHORITY, et al.,)
)
 Defendants.)

Bradley presents virtually the same issue that is presented at the current stage of this case: whether and under what circumstances metropolitan-wide relief is called for in a racial desegregation case. Although expressive of the law generally, Bradley is a case of first impression and the decision is

therefore of special relevance.* This memorandum will therefore discuss the Bradley opinion in detail and explain why, based upon it, plaintiffs have filed the motion which this memorandum supports.**

I. PROCEDURAL SITUATION IN BRADLEY v. MILLIKEN

Bradley is a school desegregation case involving the public schools of Detroit, Michigan. The district court had entered five orders, four interlocutory and one final, that were the subject matter of the appeal decided December 8, 1972. (Slip opinion 2; hereinafter the slip opinion will be cited "p."). Copies of these orders, except the first one which is reported at 338 F.Supp. 582, are attached hereto as Exhibits A, B, C and D, respectively. (Copies are taken from

*Bradley v. School Board of Richmond, 338 F.Supp. 67, rev'd., 462 F.2d 1058 (4th Cir. 1972), also involved a metropolitan plan for relief in a school desegregation case. There however it was argued that a unitary system - i.e., full relief - had already been achieved and the district court's order was reversed on the ground that a metropolitan-wide remedy was therefore not necessary to provide full relief. 462 F.2d at 1069, 1070. The Richmond plaintiffs' petition for certiorari was granted by the Supreme Court on January 15, 1973. Bradley v. Milliken, like this case, presents the situation in which full relief has not been achieved and cannot be achieved without a metropolitan remedy.

**Under a Sixth Circuit local rule the effect of granting a rehearing in banc is to vacate the previous opinion and judgment and restore the case to the docket as a pending appeal. Accordingly, particularly since argument on the Bradley rehearing will take place in less than two weeks, this Court may prefer to defer consideration of plaintiffs' motion filed herewith until after the Sixth Circuit's decision on rehearing has been rendered.

the joint appendix filed with the Court of Appeals.)

In July, 1972, the district court certified all of the orders for appeal under 28 U.S.C. §1292(b) and Federal Rule 54(b). A copy of this order of the district court is attached hereto as Exhibit E. On the same day the Court of Appeals ordered that the motion for leave to appeal be granted and set the appeal for hearing in August, 1972. A copy of this order of the Court of Appeals is attached hereto as Exhibit F. As noted above, the opinion on appeal was filed on December 8, 1972, rehearing was granted on January 16, 1973, and argument on rehearing is scheduled for February 8, 1973.

II. THE FIVE ORDERS OF THE DISTRICT COURT

A brief description of each of the five orders of the district court follows:

- A. "Ruling on Issue of Segregation," September 27, 1971.
(Reported at 338 F.Supp. 582.)

This order found that the Detroit schools were de jure segregated. 338 F.Supp. at 592. The plaintiff class had previously been defined as "all school children of the City of Detroit and all Detroit resident parents who have children of school age." 338 F.Supp. at 584. (Thus, as in this case, the discrimination complained of was confined to an intra-city system.)

At the close of proofs certain intervening parent defendants moved to join 85 suburban school districts as additional parties. This motion was taken under advisement. 338 F.Supp. at 585. After ruling on the issue of segregation the district court determined not to rule upon the motion to add the suburban school districts until comprehensive plans for desegregation were submitted, 338 F.Supp. at 595.

B. "Findings of Fact and Conclusions of Law on Detroit Only Plans of Desegregation," March 28, 1972. (Exhibit A.)

This order constituted the ruling on several desegregation plans submitted to the district court that were confined to the City of Detroit. The court found that none of the submitted plans would result in desegregation of the Detroit schools and that "relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the City." (Exhibit A, p.4.)

The court went on,

"The State, however, cannot escape its constitutional duty to desegregate the public schools of the City of Detroit by pleading local authority . . . School district lines are simply matters of political convenience and may not be used to deny constitutional rights." (Id. at pp. 4-5.)

The court concluded:

"That the court must look beyond the limits of the Detroit school district for a solution to the problem of segregation in the Detroit public schools is obvious;

that it has the authority, nay more, the duty to (under the circumstances of this case) do so appears plainly anticipated by Brown II, seventeen years ago. While other school cases have not had to deal with our exact situation, the logic of their application of the command of Brown II supports our view of our duty." (Id. at p. 5, footnotes omitted.)

- C. "Ruling on Propriety of Considering a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of the City of Detroit," March 24, 1972. (Exhibit B.)
-

This ruling preceded by four days the ruling on the Detroit-only plans of segregation because, the court said, the Court of Appeals had mandated that a hearing on the merits be concluded at the earliest possible time. (Exhibit B, p. 2.) At the outset the court stated the question before it:

"[T]he question presented is whether the court may consider relief in the form of a metropolitan plan, encompassing not only the City of Detroit, but the larger Detroit metropolitan area . . ." (Ibid.)

In answering this question the court again rejected the argument that the state's delegation of power to local government bodies vested such bodies with sovereign powers that the court could not disturb, saying:

"This we cannot accept. Political subdivisions of the states have never been considered sovereign entities, rather 'They have been traditionally regarded as subordinate governmental instrumentalities created by the state to assist it in carrying out state governmental functions.' Reynolds v. Sims, 377 U.S. 533, 575." (Exhibit B, p. 3.)

The court next considered and rejected the argument of

certain intervening school districts that, "absent a finding of acts of segregation on their part, individually, they may not be considered in fashioning a remedy for relief of the plaintiffs." (Ibid.) The court conceded that the Supreme Court had not yet ruled directly on that issue but said that Brown v. Board of Education, 349 U.S. 294, at 300 and 301, was dispositive of the issue in principle. The court then concluded,

"We conclude that it is proper for the court to consider metropolitan plans directed toward the desegregation of the Detroit public schools as an alternative to the present intra-city desegregation plans before it and, in the event that the court finds such intra-city plans inadequate to desegregate such schools, the court is of the opinion that it is required to consider a metropolitan remedy for desegregation." (Id. at p.5.)

In the course of its ruling the court defined the Detroit metropolitan area, "for the present purposes," as comprising the three counties of Wayne, Oakland and Macomb. (Exhibit B, p. 2.)

D. "Ruling on Desegregation Area and Order for Development of Plan of Desegregation," June 14, 1972. (Exhibit C.)

In this ruling the court determined that none of the metropolitan plans which had been submitted to it was a complete plan for the effective and equitable desegregation of the Detroit schools, and the court appointed a panel of 9 persons to prepare such a plan in accordance with guidelines laid down

in the ruling. (Exhibit C, p. 3.) The court ordered the parties and their agents, employees and successors to cooperate fully with the panel, including the provision of data and reasonable staff assistance, and said that all reasonable costs incurred by the panel should be borne by named defendants. (Id. at p. 4.)

In the order the court also defined the desegregation area:

"Pupil reassignment to accomplish desegregation of Detroit public schools is required within the geographic area which may be described as encompassing the following school districts [there followed a listing of 54 districts] . . ."
(Exhibit D, p. 5.)

E. "Order for Acquisition of Transportation," July 11, 1972. (Exhibit D.)

In this order (the only final order of the five, the preceding four orders all being interlocutory), and in accordance with a recommendation from the panel referred to above, the court ordered that the Detroit Board of Education should acquire busses for the implementation of an interim desegregation plan during the 1972-73 school year. (Exhibit E.)

III. ACTION OF THE COURT OF APPEALS RESPECTING THE FIVE DISTRICT COURT ORDERS

In its opinion the Court of Appeals affirmed the district court orders of September 27, 1971 and March 28, 1972 (described at IIA and IIB above), affirmed in part but vacated for specified reasons the order of March 24, 1972 (described at IIC above),

vacated the order of June 14, 1972 (described at IID above) except with respect to the activities of the desegregation panel,* and vacated the order of July 11, 1972 (described at IIE above). The case was remanded for further proceedings not inconsistent with the opinion. (p. 80.)

A. Ruling of September 27, 1972 (see IIA above).

The Court of Appeals reviewed the record on the issue of de jure segregation at length and concluded that the district court's findings of de jure segregation were not clearly erroneous "and that the District Court was therefore authorized and required to take effective measures to desegregate the Detroit Public School System." (p. 50.)

B. Ruling of March 28, 1972 (see IIB above).

In considering this order - that no plan limited to Detroit could achieve desegregation of the Detroit public schools - the Court of Appeals said that never before had it been confronted with a finding that only a metropolitan plan would effect desegregation. (p. 56.) Nonetheless, relying largely on census

*In an order of July 20, 1972, the Court of Appeals had stayed the order for the acquisition of busses as well as all orders concerned with pupil and faculty reassignment on a metropolitan basis other than the activities of the panel. (p. 3.) The stay order directed the panel to proceed with its work "to the end that there will be no unnecessary delay in the implementation of the ultimate steps contemplated in the orders of the District Court in the event the decision of the District Court is affirmed on appeal." (p. 4.) An attempt was made to appeal the orders directing submission of desegregation plans, but on February 23, 1972, those orders were held to be non-appealable and certiorari was later denied. ____ U.S. ____, 34 L.Ed.2d 83 (41 L.W. 3175) (Oct. 10, 1972).

information showing demographic trends, the Court concluded that trends toward segregation in the Detroit schools supported the district judge's findings in that regard. (pp. 56-57.) The order was affirmed. (p. 80.)

C. Ruling of March 24, 1972 (see IIC above).

The Court reviewed at length the district court's ruling that it could consider a metropolitan remedy, agreed with the district court that it could do so (p. 68), and affirmed the March 24 order insofar as it expressed that conclusion. (p. 80.)

In this regard the Court of Appeals said:

"Like the District Judge, we see no validity to an argument which asserts that the constitutional right to equality before the law is hemmed in by the boundaries of the school district." (p. 57.)

The Court added:

"[T]his court feels that some plan for desegregation beyond the boundaries of the Detroit School District is both within the equity powers of the District Court and essential to a solution of this problem 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." (p. 66.)

The Court concluded:

"We therefore conclude that the District Court in the present case is not confined to the boundary lines of Detroit in fashioning equitable relief." (p. 67.)

However, for reasons discussed more fully in connection with the June 14 order, the March 24 order was vacated because it

went beyond the determination that a metropolitan remedy should be considered and actually defined the metropolitan area before all the school districts affected by that definition had been made parties to the action.

D. The Ruling of June 14, 1972 (see IID above).

The ruling of June 14 had not only appointed a panel to develop a metropolitan desegregation plan but also defined the metropolitan area more precisely than had been done in the March 24 order by specifying 53 school districts in addition to Detroit which were determined to constitute the metropolitan area.

The latter portion of the order was vacated. The Court of Appeals observed that certain of the school districts included in the desegregation area had intervened in the case but had not yet been afforded an opportunity to offer proof, and that others of the school districts were not parties to the litigation. (p. 67.) The Court said that even though the school districts were arms and instrumentalities of the state, nevertheless under Michigan law they could sue and be sued. (Ibid.) The Court also referred to Federal Rule 19 which provides for the joinder of parties if in their absence complete relief cannot be accorded. (p. 68.) The Court therefore held, "that school districts which are to be affected by the decree of the District Court are 'necessary parties' under Rule 19," and that,

"As a prerequisite to the implementation of a plan in this case affecting any school district, the affected district first must be made a party to this litigation and afforded an opportunity to be heard." (p. 68.)

The Court added, however,

"For the guidance of the District Court on remand, however, we hold that, in fashioning an equitable remedy in this case, it will not be necessary for the District Court to find discriminatory conduct on the part of each school district, either de jure or de facto, as a prerequisite to including such district in a desegregation area to be defined by the court's decree." (p. 68.)

Thus, the orders of March 24 and June 14, although affirmed in part, were vacated to the extent they defined a desegregation area without first having joined as parties the school districts that would be affected by the implementation of a desegregation plan in such area.

The Court declined to vacate those portions of the June 14 order which appointed a panel and charged it with the duty of preparing interim and final plans of desegregation. As to this the Court said:

"The panel appointed by the District Court is authorized to proceed with its studies and planning under the direction of the District Court. Pending further orders of the District Court or this Court, the defendants and school districts involved will continue to supply administrative and staff assistance to the panel upon its request. Until further order of the court, the reasonable costs incurred by the panel will be paid as provided by the District Court's order of June 14, 1972." (p. 69.)

E. Order of July 11, 1972 (see IIE above).

This order for the purchase of busses was vacated subject to the right of the district court in its discretion to consider another such order "at the appropriate time." (p. 69.)

IV. THE IMPORT OF BRADLEY v. MILLIKEN FOR THIS CASE

The basic holdings of Bradley are (1) that it is the equitable power and duty of a district court to rule that metropolitan remedies must be considered where such remedies are shown to be necessary to provide full relief for racial segregation, and (2) that it is inappropriate to rule on a specific metropolitan desegregation plan, including the definition of the area to be included in such a plan, without joining as parties to the action those parties who will be affected by a plan encompassing such an area.

In light of this latter holding it would be inappropriate to ask this Court to rule now on plaintiffs' specific proposed metropolitan desegregation plan as embodied in plaintiffs' proposed judgment order filed on September 25, 1972. The teaching of Bradley is that such a ruling, including the definition of the desegregation area, should take place only after the affected parties have been joined in the action. (An appendix to this memorandum discusses who such affected parties would be in this action.)

But Bradley also teaches that it is not premature to rule on

the necessity or propriety of considering a metropolitan remedy before all of such parties are joined in the action. The Bradley Court of Appeals opinion specifically affirmed the district court's ruling of March 28 finding that Detroit-only plans were unacceptable, and it also affirmed that part of the order of March 24 which concluded that a metropolitan plan was necessary and proper to be considered, notwithstanding suburban school districts were not parties to the action at the time either of those orders was entered.

Such a procedure makes good sense. If all potential affected parties had to be joined before it was determined that a metropolitan remedy should be considered, the court and the parties to the action would be put to the time and trouble of joining additional parties (and those parties would be put to the time, trouble and expense of appearing in the case) without any certainty that the court would conclude that a sufficient showing had been made respecting the propriety of considering a metropolitan remedy to justify taking such steps.*

*Of course, the determination as to the propriety or necessity of considering a metropolitan remedy might at the court's discretion be reopened at the instance of any newly joined party, or indeed any party, since by its very nature such an order is interlocutory and always subject to modification prior to termination of the action. Accordingly, once the court makes such a determination and additional parties are thereafter joined, such additional parties could try to persuade the court to reopen its consideration of the threshold issue of the propriety or necessity of considering a metropolitan plan.

Since the hearing of November 27-29, 1972, in this case included testimony on precisely the issue to which it is now proposed that the Court confine its ruling - namely, the propriety or necessity of considering a metropolitan plan - no additional hearing is now necessary for a ruling on this issue. Indeed, the evidence offered on November 27-29, i.e., census statistics on demographic trends, is precisely the kind of evidence relied upon by both the district court and the Court of Appeals in Bradley v. Milliken for the analogous ruling in that case on the propriety of considering a metropolitan plan.

Therefore, plaintiffs are submitting with this memorandum a motion for a ruling, similar to those portions of the rulings of March 28, March 24 and June 14 that were affirmed in Bradley, asking for a determination that on the record in this case full relief cannot be afforded within Chicago alone, that it is therefore appropriate and necessary to consider a metropolitan plan, and calling upon HUD and CHA to prepare and submit their recommendations respecting such a plan to the Court (something neither HUD nor CHA have been heretofore ordered to do).^{*} A proposed form of order is attached to the motion. If the Court grants plaintiffs' motion and enters the proposed order,

^{*}HUD has been invited but not directed to submit a metropolitan plan. (Order of December 23, 1971.) CHA has offered to give its views to the Court but has not done so. (CHA Response of March 17, 1972, p. 3.)

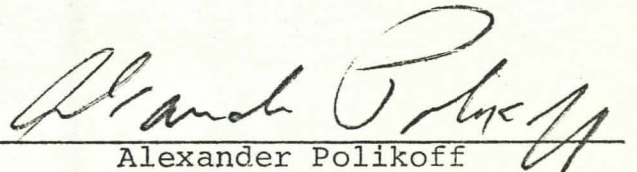
plaintiffs would at the appropriate time ask leave to join additional parties for the further proceedings in the case. (See the Appendix to this memorandum.) If the Court denies the motion and rules that a metropolitan remedy need not be considered in this case, there would of course be no need to join additional parties.

The proposed procedure has the additional advantage of providing an opportunity for prompt appellate review on the threshold question of the necessity of a metropolitan plan in this case without first having to join additional parties to obtain such review. The Court would presumably be willing to include in its order (as was done in Bradley) appropriate language under 28 U.S.C. §1292(b) to permit such an appellate review since its ruling would obviously involve a "controlling question of law" and would be of central importance to the further development of the case as well as the predicate for adding new parties. If the Court of Appeals then permitted an appeal it would be possible to obtain a prompt (appeals under §1292(b) must be taken within 10 days) and definitive determination of the necessity for considering metropolitan relief in this case before proceeding to a consideration of the metropolitan plan itself and the joinder of additional parties. (Appropriate language under 28 U.S.C. §1292(b) is included in plaintiffs' proposed form of order.)

Meanwhile, however, again as in Bradley, planning could go forward as directed by the Court since the Court would have set in motion the procedure for obtaining the metropolitan remedy proposals of HUD and CHA.*

Accordingly, plaintiffs, respectfully ask the Court to defer ruling on the proposed final judgment orders submitted by HUD on April 26, 1972, and by plaintiffs on September 25, 1972, and to rule instead on the motion submitted herewith for a ruling on the propriety and necessity of considering a metropolitan remedy in this case.

Respectfully submitted,



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January 29, 1973

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*HUD has consistently asserted it has no authority to prepare plans at the Court's direction. If it wished to do so HUD could seek review of this portion of the Court's order under 28 U.S.C. §1292(a). See 9 Moore's Federal Practice, pp. 234-35.

APPENDIX ON PARTIES

In Bradley, the "affected parties" were all the school districts within the proposed desegregation area because implementation of a school desegregation plan obviously affects, directly and immediately, any school district within the desegregation area.

In this case implementation of a public housing desegregation plan would similarly have a direct and immediate effect on all housing authorities within the proposed desegregation area because such authorities would be obligated immediately to use their best efforts to provide housing for the plaintiff class within their respective areas of operation, or allow CHA to do so. Accordingly, if the Court rules favorably on the propriety and necessity of considering a metropolitan remedy in this case, plaintiffs will ask leave to join the following five housing authorities, which are all the authorities in the Chicago urbanized area:

- Housing Authority of Cook County
- DuPage County Housing Authority
- Lake County Housing Authority
- Waukegan Housing Authority
- North Chicago Housing Authority

In addition, plaintiffs would consider it appropriate to ask leave to join the State of Illinois which has a continuing supervisory authority over all these housing authorities. Ill.Rev.Stats., Ch. 67-1/2. §13.

Plaintiffs do not consider that the municipalities within the urbanized area are "affected parties" to be joined at this stage of the case. Unlike a school district which is an immediate participant in a school desegregation plan, a municipality becomes a participant in a public housing desegregation plan only if and when sites for housing are proposed within such municipality by a housing authority. Depending upon the amount of housing to be provided, the availability of funds and the discretionary site location choices of the housing authorities, some municipalities in the urbanized area may never be "affected" by a public housing desegregation plan in this case, others may not be affected for years to come, and none will be affected immediately. Only when a local housing authority at some indeterminate date in the future selects a site pursuant to the plan in a particular municipality will such municipality be "affected." At that time, of course, such municipality would be joined and would have a full opportunity to present evidence if it wished to do so on why the proposed public housing should not be provided within its borders.

Accordingly, if plaintiffs' motion is granted, plaintiffs would thereafter ask leave to join the six additional parties named above as parties defendant to the action.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al.,	)	
	Plaintiffs	)
v.		)
WILLIAM G. MILLIKEN, et al.,	)	
	Defendants	)
DETROIT FEDERATION OF TEACH-	)	CIVIL ACTION
ERS, LOCAL NO. 231, AMERICAN FED-	)	NO: 35257
ERATION OF TEACHERS, AFL-CIO,	)	
	Defendant-	)
	Intervenor	)
and	)	
DENISE MAGDOWSKI, et al.,	)	
	Defendants-	)
	Intervenor	)
et al.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON
DETROIT-ONLY PLANS OF DESEGREGATION

In accordance with orders of the court defendant Detroit Board of Education submitted two plans, limited to the corporate limits of the city, for desegregation of the public schools of the City of Detroit, which we will refer to as Plan A and Plan C; plaintiffs submitted a similarly limited plan, which will be referred to as the Foster Plan. Hearings were had on said plans on March 14, 15, 16, 17 and 21, 1972. In considering these plans the court does not limit itself to the proofs offered at the hearing just concluded; it considers as part of the evidence bearing on the issue (i.e., City-Only Plans) all proofs submitted in the case to this point, and it specifically incorporates herein by reference the Findings and Conclusions contained in its "Ruling on Issue of Segregation," filed September 27, 1971.

The court makes the following factual findings:

PLAN A.

1. The court finds that this plan is an elaboration and extension of the so-called Magnet Plan, previously authorized for implementation as an interim plan pending hearing and determination on the issue of segregation.

2. As proposed we find, at the high school level, that it offers a greater and wider degree of specialization, but any hope that it would be effective to desegregate the public schools of the City of Detroit at that level is virtually ruled out by the failure of the current model to achieve any appreciable success.

3. We find, at the Middle School level, that the expanded model would affect, directly, about 24,000 pupils of a total of 140,000 in the grades covered; and its effect would be to set up a school system within the school system, and would intensify the segregation in schools not included in the Middle School program. In this sense, it would increase segregation.

4. As conceded by its author, Plan A is neither a desegregation nor an integration plan.

PLAN C.

1. The court finds that Plan C is a token or part-time desegregation effort.

2. We find that this plan covers only a portion of the grades and would leave the base schools no less racially identifiable.

PLAINTIFFS' PLAN.

1. The court finds that Plaintiffs' Plan would accomplish more desegregation than now obtains in the system, or would be achieved under Plan A or Plan C.

2. We find further that the racial composition of the student body is such that the plan's implementation would clearly make the entire Detroit public school system racially identifiable as Black.

3. The plan would require the development of transportation on a vast scale which, according to the evidence, could not be furnished, ready for operation, by the opening of the 1972-73 school year. The plan contemplates the transportation of 82,000 pupils and would require the acquisition of some 900 vehicles, the hiring and training of a great number of drivers, the procurement of space for storage and maintenance, the recruitment of maintenance and the not negligible task of designing a transportation system to service the schools.

4. The plan would entail an overall recasting of the Detroit school system, when there is little assurance that it would not have to undergo another reorganization if a metropolitan plan is adopted.

5. It would involve the expenditure of vast sums of money and effort which would be wasted or lost.

6. The plan does not lend itself as a building block for a metropolitan plan.

7. The plan would make the Detroit school system more identifiably Black, and leave many of its schools 75 to 90 per cent Black.

8. It would change a school system which is now Black and White to one that would be perceived as Black, thereby increasing the flight of Whites from the city and the system, thereby increasing the Black student population.

9. It would subject the students and parents, faculty and administration, to the trauma of reassignments, with little likelihood that such reassignments would continue for any appreciable time.

In summary, we find that none of the three plans would result in the desegregation of the public schools of the Detroit school district.

CONCLUSIONS OF LAW

1. The court has continuing jurisdiction of this action for all purposes, including the granting of effective relief. See Ruling on Issue of Segregation, September 27, 1971.

2. On the basis of the court's finding of illegal school segregation, the obligation of the school defendants is to adopt and implement an educationally sound, practicable plan of desegregation that promises realistically to achieve now and hereafter the greatest possible degree of actual school desegregation. *Green v. County School Board*, 391 U.S. 430; *Alexander v. Holmes County Board of Education*, 396 U.S. 19; *Carter v. West Feliciana Parish School Board*, 396 U.S. 290; *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1.

3. Detroit Board of Education Plans A and C are legally insufficient because they do not promise to effect significant desegregation. *Green V. County School Board*, *supra*, at 439-440.

4. Plaintiffs' Plan, while it would provide a racial mix more in keeping with the Black-White proportions of the student population than under either of the Board's plans or as the system now stands, would accentuate the racial identifiability of the district as a Black school system, and would not accomplish desegregation.

5. The conclusion, under the evidence in this case, is inescapable that relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the city. The State, however, cannot escape its constitutional duty to desegregate the public schools of the City of Detroit by pleading local authority. As Judge Merhige pointed out in *Bradley v. Richmond*, (slip opinion p. 64):

"The power conferred by state law on central and local officials to determine the shape of school attendance units cannot be employed, as it has been here, for the purpose and with the effect of sealing off white conclaves of a racial composition more appealing to the local electorate and obstructing the desegregation of schools. The equal protection clause has

required far greater inroads on local government structure than the relief sought here, which is attainable without deviating from state statutory forms. Compare *Reynolds v. Sims*, 377 U.S. 533; *Gomillion v. Lightfoot*, 364 U.S. 339; *Serrano v. Priest*, 40 U.S.L.W. 2128 (Calif. Sup. Ct. Aug. 30, 1971).

"In any case, if political boundaries amount to insuperable obstacles to desegregation because of structural reason, such obstacles are self-imposed. Political subdivision lines are creations of the state itself, after all."

School district lines are simply matters of political convenience and may not be used to deny constitutional rights. If the boundary lines of the school districts of the City of Detroit and the surrounding suburbs were drawn today few would doubt that they could not withstand constitutional challenge. In seeking for solutions to the problem of school segregation, other federal courts have not "treated as immune from intervention the administrative structure of a state's educational system, to the extent that it affects the capacity to desegregate. Geographically or administratively independent units have been compelled to merge or to initiate or continue cooperative operation as a single system for school desegregation purposes."¹

That the court must look beyond the limits of the Detroit school district for a solution to the problem of segregation in the Detroit public schools is obvious; that it has the authority, nay more, the duty to (under the circumstances of this case) do so appears plainly anticipated by *Brown II*,² seventeen years ago. While other school cases have not had to deal with our exact situation,³ the logic of their application of the command of *Brown II* supports our view of our duty.

Date: MARCH 28th, 1972.

/s/

Stephen J. Roth
United States District Judge

FOOTNOTES

[1]

Bradley v. Richmond, supra [slip opinion p. 68].

[2]

Brown v. Bd. of Ed. of Topeka, 349 U.S. 294, pp. 300-301.

[3]

Haney v. County Board of Education of Sevier County, 410 F.2d 920 (8th Cir. 1969); Bradley v. School Board of the City of Richmond, supra, slip opinion pp. 664-65; Hall v. St. Helena Parish School Board, 197 F. Supp. 649 (E.D. La. 1961), aff'd. 287 F.2d 376 (5th Cir. 1961) and 368 U.S. 515 (1962); Lee v. Macon County Bd. of Educ., 448 F.2d 746, 752 (5th Cir. 1971); Gomillion v. Lightfoot, 364 U.S. 339 (1960); Turner v. Littleton-Lake Gaston School Dist., 442 F.2d 584 (4th Cir. 1971); United States v. Texas 447 F.2d 551 (5th Cir. 1971); Lemon v. Bossier Parish School Board, 446 F.2d 911 (5th Cir. 1971).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al.,	)	
	Plaintiffs	)
v.		)
WILLIAM G. MILLIKEN, et al.,	)	
	Defendants	)
DETROIT FEDERATION OF TEACH-	)	CIVIL ACTION
ERS, LOCAL NO. 231, AMERICAN	)	NO. 35257
FEDERATION OF TEACHERS, AFL-CIO,	)	
	Defendant-	)
	Intervenor	)
and	)	
DENISE MAGDOWSKI, et al.,	)	
	Defendants-	)
	Intervenor	)
<i>et al.</i>	)	

RULING ON PROPRIETY OF CONSIDERING A METROPOLITAN REMEDY
TO ACCOMPLISH DESEGREGATION OF THE PUBLIC SCHOOLS
OF THE CITY OF DETROIT

In its prior ruling, "Ruling on Issue of Segregation" (September 27, 1971), the court has found that segregation exists in the public schools of the City of Detroit because of, among other causes, the acts of the State of Michigan and the Detroit Board of Education. In the language of *Swann*,^[1] "a right and a violation have been shown."^[2] Given the constitutional violation, judicial authority, when properly invoked, must be exercised to right the wrong. In addressing itself to this task the Supreme Court has said that the "scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are

inherent in equitable remedies.”[3] And, it pointed out, “a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right.”[4] The task is to correct the condition which offends the Constitution. Illustrative of what was meant by the Supreme Court, see the legislative and congressional reapportionment cases.[5]

Under the circumstances of this case,[6] the question presented is whether the court may consider relief in the form of a metropolitan plan, encompassing not only the City of Detroit, but the larger Detroit metropolitan area which, for the present purposes, we may define as comprising the three counties of Wayne, Oakland and Macomb. It should be noted that the court has just concluded its hearing on plans submitted by the plaintiffs and the Detroit Board of Education for the intra-city desegregation of the Detroit public schools. A ruling has not yet been made on these plans, but in accordance with the mandate of the Court of Appeals that a hearing on the merits be concluded at the earliest possible time, we consider it necessary to proceed apace with a resolution of the issue before us, *i.e.*, the propriety of weighing the legal availability of a metropolitan remedy for segregation.

The State defendants in this case take the position, as we understand it, that no “state action” has had a part in the segregation found to exist. This assertion disregards the findings already made by this court, and the decision of the Court of Appeals as well.[7] Additionally, they appear to view the

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delegation of the State's powers and duties with respect to education to local governmental bodies as vesting the latter with sovereign powers which may not be disturbed by either the State or the court. This we cannot accept. Political subdivisions of the states have never been considered sovereign entities, rather "They have been traditionally regarded as subordinate governmental instrumentalities created by the state to assist it in carrying out of state governmental functions." *Reynolds v. Sims*, 377 U.S. 533, 575. Perhaps the clearest refutation of the State's asserted lack of power to act in the field of education is Act 48 of 1970. The State cannot evade its constitutional responsibility by a delegation of powers to local units of government. The State defendants' position is in error in two other respects: 1. The local school districts are not fully autonomous bodies, for to the extent it has seen fit the State retains control and supervision; and 2. It assumes that any metropolitan plan, if one is adopted, would, of necessity, require the dismantling of school districts included in the plan.

The main thrust of the objections to the consideration of a metropolitan remedy advanced by intervening school districts is that, absent a finding of acts of segregation on their part, individually, they may not be considered in fashioning a remedy for relief of the plaintiffs. It must be conceded that the Supreme Court has not yet ruled directly on this issue; accordingly, we can only proceed by feeling our way through its past decisions with respect to the goal to be achieved in school desegregation cases. *Green v. County School Board*, 391 U.S. 430, teaches us that it is our obligation to assess the effectiveness of proposed plans of desegregation in the light of circumstances present and the available alternatives; and to choose the alternative or alternatives which promise realistically to work now and hereafter to produce the maximum actual desegregation. As Chief Justice Burger said in *Swann*, "in seeking to define the scope of remedial power of courts in an area as sensitive as we deal with here, words are poor instruments to convey the sense of basic fairness inherent in equity." Substance, not semantics, must govern.

It seems to us that *Brown*^[8] is dispositive of the issue:

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."

* * *

"**** the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation systems, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems."

We conclude that it is proper for the court to consider metropolitan plans directed toward the desegregation of the Detroit public schools as an alternative to the present intra-city desegregation plans before it and, in the event that the court finds such intra-city plans inadequate to desegregate such schools, the court is of the opinion that it is required to consider a metropolitan remedy for desegregation.

The schedule
metropolitan plans
28, 1972.

DATE: March 24th,

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- [1] Swann v. Charlotte-
 - [2] Ibid., p. 15.
 - [3] Ibid., p. 15.
 - [4] Ibid., pp. 15, 16.
 - [5] Reynolds v. Sims, 37
 - [6] See "Ruling on Issu
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 - [7] See "Ruling on Issu
F.2d 897.
 - [8] Brown v. Bd. of Ed.

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The schedule previously established for the hearing on metropolitan plans will go forward as noticed, beginning March 28, 1972.

DATE: March 24th, 1972.

/s/

Stephen J. Roth
United States District Judge

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- [1] Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1.
[2] Ibid., p. 15.
[3] Ibid., p. 15.
[4] Ibid., pp. 15, 16.
[5] Reynolds v. Sims, 377 U.S. 533.
[6] See "Ruling on Issue of Segregation," supra, indicating a black student projection for the school year 1980-81 of 80.7%.
[7] See "Ruling on Issue of Segregation," supra; Bradley v. Milliken, 433 F.2d 897.
[8] Brown v. Bd. of Ed. of Topeka, 349 U.S. 294, at 300 and 301.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al.,

Plaintiffs

WILLIAM G. MILLIKEN, et al.,

Defendants

and

DETROIT FEDERATION OF TEACHERS,
LOCAL 231, AMERICAN FEDERATION
OF TEACHERS, AFL-CIO,

Defendant-
Intervenor

and

DENISE MAGDOWSKI, et al.,

Defendants-
Intervenor

et al.

CIVIL ACTION NO:
35257

RULING ON DESEGREGATION AREA
AND
ORDER FOR DEVELOPMENT OF
PLAN OF DESEGREGATION

On September 27, 1971 the court made its Ruling on Issue of Segregation, holding that illegal segregation exists in the public schools of the City of Detroit as a result of a course of conduct on the part of the State of Michigan and the Detroit Board of Education. Having found a constitutional violation as established, on October 4, 1971 the court directed the school board defendants, City and State, to develop and submit plans of desegregation, designed to achieve the greatest possible degree of actual desegregation, taking into account the practicali-

ties of the situation. The directive called for the submission of both a "Detroit-only" and a "Metropolitan" plan.

Plans for the desegregation of the Detroit schools were submitted by the Detroit Board of Education and by the plaintiffs. Following five days of hearings the court found that while plaintiffs' plan would accomplish more desegregation than now obtains in the system, or which would be achieved under either Plan A or C of the Detroit Board of Education submissions, none of the plans would result in the desegregation of the public schools of the Detroit school district. The court, in its findings of fact and conclusions of law, concluded that "relief of segregation in the Detroit public schools cannot be accomplished within the corporate geographical limits of the city," and that it had the authority and the duty to look beyond such limits for a solution to the illegal segregation in the Detroit public schools. Accordingly, the court ruled, it had to consider a metropolitan remedy for segregation.

The parties submitted a number of plans for metropolitan desegregation. The State Board of Education submitted six - without recommendation, and without indicating any preference. With the exception of one of these, none could be considered as designed to accomplish desegregation. On the other hand the proposals of intervening defendant Magdowski, et al., the Detroit Board of Education and the plaintiffs were all good faith efforts to accomplish desegregation in the Detroit metropolitan area. The three plans submitted by these parties have many similarities, and all of them propose to incorporate, geographically, most—and in one instance, all—of the three-county area of Wayne, Oakland and Macomb.

The hearing on the proposals have set the framework, and have articulated the criteria and considerations, for developing and evaluating an effective plan of metropolitan desegregation. None of the submissions represent a complete plan for the effective and equitable desegregation of the metropolitan area, capable of implementation in its present form. The court will therefore draw upon the resources of the parties to devise, pursuant to its direction, a constitutional plan of desegregation of the Detroit public schools.

Based on the entire record herein, the previous oral and written rulings and orders of this court, and the Findings of Fact and Conclusions of Law filed herewith, IT IS ORDERED:

I.

A. As a panel charged with the responsibility of preparing and submitting an effective desegregation plan in accordance with the provisions of this order, the court appoints the following:

1. A designee of the State Superintendent of Public Instruction,*
2. Harold Wagner, Supervisor of the Transportation Unit in the Safety and Traffic Education Program of the State Department of Education;
3. Merle Henrickson, Detroit Board of Education;
4. Aubrey McCutcheon, Detroit Board of Education;
5. Freeman Flynn, Detroit Board of Education;
6. Gordon Foster, expert for plaintiffs;
7. Richard Morshead, representing defendant Magdowski, et al.;
8. A designee of the newly intervening defendants;*
9. Rita Scott, of the Michigan Civil Rights Commission.

Should any designated member of this panel be unable to serve, the other members of the panel shall elect any necessary replacements, upon notice to the court and the parties. In the

*The designees of the State Superintendent of Public Instruction and newly intervening defendants shall be communicated to the court within seven days of the entry of this order. In the event the newly intervening defendants cannot agree upon a designee, they may each submit a nominee within seven days from the entry of this order, and the court shall select one of the nominees as representative of said defendants.

absence of objections within five days of the notice, and pending a final ruling, such designated replacement shall act as a member of the panel.

B. As soon as possible, but in no event later than 45 days after the issuance of this order, the panel is to develop a plan for the assignment of pupils as set forth below in order to provide the maximum actual desegregation, and shall develop as well a plan for the transportation of pupils, for implementation for all grades, schools and clusters in the desegregation area. Insofar as required by the circumstances, which are to be detailed in particular, the panel may recommend immediate implementation of an interim desegregation plan for grades K-6, K-8 or K-9 in all or in as many clusters as practicable, with complete and final desegregation to proceed in no event later than the fall 1973 term. In its transportation plan the panel shall, to meet the needs of the proposed pupil assignment plan, make recommendations, including the shortest possible timetable, for acquiring sufficient additional transportation facilities for any interim or final plan of desegregation. Such recommendations shall be filed forthwith and in no event later than 45 days after the entry of this order. Should it develop that some additional transportation equipment is needed for an interim plan, the panel shall make recommendations for such acquisition within 20 days of this order.

C. The parties, their agents, employees, successors. [SIC] and all others having actual notice of this order shall cooperate fully with the panel in their assigned mission, including, but not limited to, the provision of data and reasonable full and part-time staff assistance as requested by the panel. The State defendants shall provide support, accreditation, funds, and otherwise take all actions necessary to insure that local officials and employees cooperate fully with the panel. All reasonable costs incurred by the panel shall be borne by the State defendants; provided, however, that staff assistance or other services provided by any school district, its employees or agents, shall be without charge, and the cost thereof shall be borne by such school district.

II.

A. Pupil reassignment to accomplish desegregation of the Detroit public schools is required within the geographical area which may be described as encompassing the following school districts (see Exhibit P.M. 12), and hereinafter referred to as the "desegregation area":

Lakeshore	Birmingham	Fairlane
Lakeview	Hazel Park	Garden City
Roseville	Highland Park	North Dearborn Heights
South Lake	Royal Oak	Cherry Hill
East Detroit	Berkley	Inkster
Grosse Pointe	Ferndale	Wayne
Centerline	Southfield	Westwood
Fitzgerald	Bloomfield Hills	Ecorse
Van Dyke	Oak Park	Romulus
Fraser	Redford Union	Taylor
Harper Woods	West Bloomfield	River Rouge
Warren	Clarenceville	Riverview
Warren Woods	Farmington	Wyandotte
Clawson	Livonia	Allen Park
Hamtramck	South Redford	Lincoln Park
Lamphere	Crestwood	Melvindale
Madison Heights	Dearborn	Southgate
Troy	Dearborn Heights	Detroit

Provided, however, that if in the actual assignment of pupils it appears necessary and feasible to achieve effective and complete racial desegregation to reassign pupils of another district or other districts, the desegregation panel may, upon notice to the parties, apply to the Court for an appropriate modification of this order.

B. Within the limitations of reasonable travel time and distance factors, pupil reassignments shall be effected within the clusters described in Exhibit P.M. 12 so as to achieve the greatest degree of actual desegregation to the end that, upon implementation, no school, grade or classroom by substantially

disproportionate to the overall pupil racial composition. The panel may, upon notice to the parties, recommend reorganization of clusters within the desegregation area in order to minimize administrative inconvenience, or time and/or numbers of pupils requiring transportation.

C. Appropriate and safe transportation arrangements shall be made available without cost to all pupils assigned to schools deemed by the panel to be other than "walk-in" schools.

D. Consistent with the requirements of maximum actual desegregation, every effort should be made to minimize the numbers of pupils to be reassigned and requiring transportation, the time pupils spend in transit, and the number and cost of new transportation facilities to be acquired by utilizing such techniques as clustering, the "skip" technique, island zoning, reasonable staggering of school hours, and maximization of use of existing transportation facilities, including buses owned or leased by school districts and buses operated by public transit authorities and private charter companies. The panel shall develop appropriate recommendations for limiting transfers which affect the desegregation of particular schools.

E. Transportation and pupil assignment shall, to the extent consistent with maximum feasible desegregation, be a two-way process with both black and white pupils sharing the responsibility for transportation requirements at all grade levels. In the determination of the utilization of existing, and the construction of new, facilities, care shall be taken to randomize the location of particular grade levels.

F. Faculty and staff shall be reassigned, in keeping with pupil desegregation, so as to prevent the creation or continuation of the identification of schools by reference to past racial composition, or the continuation of substantially disproportionate racial composition of the faculty and staffs, of the schools in the desegregation area. The faculty and staffs assigned to the schools within the desegregation area shall be substantially desegregated, bearing in mind, however, that the desideratum is the

balance of faculty and staff by qualifications for subject and grade level, and then by race, experience and sex. In the context of the evidence in this case, it is appropriate to require assignment of no less than 10% black faculty and staff at each school, and where there is more than one building administrator, every effort should be made to assign a bi-racial administrative team.

G. In the hiring, assignment, promotion, demotion, and dismissal of faculty and staff, racially non-discriminatory criteria must be developed and used; provided, however, there shall be no reduction in efforts to increase minority group representation among faculty and staff in the desegregation area. Affirmative action shall be taken to increase minority employment in all levels of teaching and administration.

H. The restructuring of school facility utilization necessitated by pupil reassignments should produce schools of substantially like quality, facilities, extra-curricular activities and staffs; and the utilization of existing school capacity through the desegregation area shall be made on the basis of uniform criteria.

I. The State Board of Education and the State Superintendent of Education shall with respect to all school construction and expansion, "consider the factor of racial balance along with other educational considerations in making decisions about new school sites, expansion of present facilities * * *"; and shall, within the desegregation area disapprove all proposals for new construction or expansion of existing facilities when "housing patterns in an area would result in a school largely segregated on racial * * * lines," all in accordance with the 1966 directive issued by the State Board of Education to local school boards and the State Board's "School Plant Planning Handbook" (see Ruling on Issue of segregation, p. 13.).

J. Pending further orders of the court, existing school district and regional boundaries and school governance arrangements will be maintained and continued, except to the extent necessary to effect pupil and faculty desegregation as set forth herein; provided, however, that existing administrative, finan-

cial, contractual, property and governance arrangements shall be examined, and recommendations for their temporary and permanent retention or modification shall be made, in light of the need to operate an effectively desegregated system of schools.

K. At each school within the desegregated area provision shall be made to insure that the curriculum, activities, and conduct standards respect the diversity of students from differing ethnic backgrounds and the dignity and safety of each individual, students, faculty, staff and parents.

L. The defendants shall, to insure the effective desegregation of the schools in the desegregation area, take immediate action including, but not limited to, the establishment or expansion of in-service training of faculty and staff, create bi-racial committees, employ black counselors, and require be-racial and non-discriminatory extra-curricular activities.

III

The State Superintendent of Public Instruction, with the assistance of the other state defendants, shall examine, and make recommendations, consistent with the principles established above, for appropriate interim and final arrangements for the (1) financial, (2) administrative and school governance, and (3) contractual arrangements for the operation of the schools within the desegregation area, including steps for unifying, or otherwise making uniform the personnel policies, procedures, contracts, and property arrangements of the various school districts.

Within 15 days of the entry of this order, the Superintendent shall advise the court and the parties of his progress in preparing such recommendations by filing a written report with the court and serving it on the parties. In not later than 45 days after the entry of this order, the Superintendent shall file with the court his recommendations for appropriate interim and final relief in these respects.

In his examination and recommendations, the Superintendent, consistent with the rulings and orders of this court,

may be guided, but not limited, by existing state law; where state law provides a convenient and adequate framework for interim or ultimate relief, it should be followed, where state law either is silent or conflicts with what is necessary to achieve the objectives of this order, the Superintendent shall independently recommend what he deems necessary. In particular, the Superintendent shall examine and choose one appropriate interim arrangement to oversee the immediate implementation of a plan of desegregation.

IV.

Each party may file appropriate plans or proposals for inclusion in any final order which may issue in this cause. The intent of this order is to permit all the parties to proceed apace with the task before us: fashioning an effective plan for the desegregation of the Detroit public schools.

Fifteen days after the filing of the reports required herein, hearings will begin on any proposal to modify any interim plan prepared by the panel and all other matters which may be incident to the adoption and implementation of any interim plan of desegregation submitted. The parties are placed on notice that they are to be prepared at that time to present their objections, alternatives and modifications. At such hearing the court will not consider objections to desegregation or proposals offered "instead" of desegregation.

Hearings on a final plan of desegregation will be set as circumstances require.

DATE: JUNE 14, 1972.

/s/

Stephen J. Roth
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al,	)	
	Plaintiffs,	)
v.		)
WILLIAM G. MILLIKEN, et al,	)	
	Defendants,	)
and		)
DETROIT FEDERATION OF TEACH-	)	Civil Action
ERS, LOCAL 231, AMERICAN FEDERA-	)	No. 35257
TION OF TEACHERS, AFL-CIO,	)	
	Defendant-Intervenor,	)
and		)
DENISE MAGDOWSKI, et al,	)	
	Defendants-Intervenor,	)
et al.	)	

ORDER
FOR ACQUISITION OF TRANSPORTATION

At a session of the United States District Court, Federal Building, Detroit, Michigan, on the 11th day of July, 1972.

The Court has received a recommendation from the Panel appointed under its previous orders that 295 buses, which it had determined are available, should be acquired for the purpose of providing transportation under an interim plan. The Court also had before it the still pending motion of Plaintiffs for the purchase of 350 buses. Having heard the arguments of counsel, IT IS HEREBY ORDERED:

1. The Defendant Detroit Board of Education shall acquire by purchase, lease or other contractual arrangement at least 295 buses for use in the interim desegregation plan during the 1972-73 school year. All financial obligations incurred as the result of this Order shall be the sole financial obligation of the State Defen-

dants, including the added State Defendant State Treasurer Allison Green, as set forth below in Paragraph 2. Said order, lease, or other contract shall be entered into by negotiation and without the necessity for bids forthwith and in no event later than Thursday, July 13, 1972.

2. The State Defendants shall bear the cost of this acquisition and State Defendants, including the added State Defendant Green, shall take all necessary steps utilizing existing funds and sources of revenue, to be acquired State funds, legislatively authorized and funds directed by the State Constitution to the State School Aid Funds and by re-allocation of existing or new funds to pay for said transportation acquisition either directly or through the Defendant Detroit Board.

United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al.,	)	
	)	
Plaintiffs	)	
v.	)	
WILLIAM G. MILLIKEN, et al.,	)	
	)	
Defendants	)	
DETROIT FEDERATION OF TEACHERS	)	CIVIL ACTION
LOCAL NO. 231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO,	)	NO. 35257
	)	
Defendant-	)	
Intervenor	)	
and	)	
DENISE MAGDOWSKI, et al.,	)	
	)	
Defendants-	)	
Intervenor	)	
et al.	)	

ORDER

At a session of said court held in the Federal Building, City of Flint, County of Genesee, on this 19th day of JULY, A.D. 1972.

HONORABLE STEPHEN J. ROTH

District Judge United States District Judge

This court having heard oral motions on July 19, 1972, for entry of judgments in accordance with the provisions of Fed. R. Civ. P. 54(b) and for certification under the provisions of 28 U.S.C. 1292(b) in connection with certain orders and rulings of the court heretofore entered; the court determines for the purpose of appeal, and subject to this court's statements at the hearing on July 19, 1972, that there is no just reason for delay and that each of the following orders:

1. Ruling on Issue of Segregation, September 27, 1971;

EXHIBIT E

2. Ruling on Propriety of Considering a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of the City of Detroit, March 24, 1972;

3. Findings of Fact and Conclusions of Law on Detroit-only Plans of Desegregation, March 28, 1972;

4. Ruling on Desegregation Area and Development of Plan, and Findings of Fact and Conclusions of Law in Support thereof, June 14, 1972; and

5. Order for Acquisition of Transportation, July 11, 1972 shall be deemed final orders under Rule 54(b) of the Federal Rules of Civil Procedure and the court certifies the issues presented therein under the provisions of 28 U.S.C. 1292(b).

/s/ Stephen J. Roth

UNITED STATES DISTRICT JUDGE

DATE: July 20, 1972

TIME: 8:30 a.m.

NO. 72-8002

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RONALD BRADLEY, et al,	)	
Plaintiffs-Appellants	)	
v.	)	
WILLIAM G. MILLIKEN, et al,	)	
Defendants-Appellants	)	ORDER
and	)	
DETROIT FEDERATION OF TEACHERS	)	
LOCAL 231, AMERICAN FEDERATION	)	
OF TEACHERS, AFL-CIO,	)	
Defendant-Intervenor	)	
and	)	
DENISE MAGDOWSKI, et al,	)	
Defendants-Intervenors	)	

Before: PHILLIPS, Chief Judge, EDWARDS and PECK, Circuit Judges.

The District Court has certified that certain orders entered by him in this case involve controlling questions of law, as provided by 28 U. S. C. § 1292(b), and has made a determination of finality under Rule 54(b), Fed. R. Civ. P.

This court concludes that among the substantial questions presented there is at least one difficult issue of first impression which never has been decided by this court or the Supreme Court. In so holding we imply nothing as to our view of the merits of this appeal. We conclude that an immediate appeal may materially advance the ultimate termination of the litigation. Accordingly, it is ORDERED that the motion for leave to appeal be and hereby is granted.

It is further ORDERED that the appeal in this case be advanced on the docket of this court and scheduled for hearing Thursday, August 24, 1972, at 9 a.m. The appendix and simultaneous briefs of all parties shall be filed not later than 25 days

EXHIBIT F

after the entry of this order. Reply briefs shall be filed not later than August 21, 1972. Typewritten appendix and briefs may be filed in lieu of printed briefs, together with ten legible copies produced by Xerox or similar process. An appendix must be filed. The court will not entertain a motion to hear the appeal on the original record.

The motion for stay pending appeal having been considered, it is further ORDERED that the Order for Acquisition of Transportation, entered by the District Court on July 11, 1972, and all orders of the District Court concerned with pupil and faculty reassignment within the Metropolitan Area beyond the geographical jurisdiction of the Detroit Board of Education, and all other proceedings in the District Court other than planning proceedings, be stayed pending the hearing of this appeal on its merits and the disposition of the appeal by this court, or until further order of this court. This stay order does not apply to the studies and planning of the panel which has been appointed by the District Court in its order of June 14, 1972, which panel was charged with the duty of preparing interim and final plans of desegregation. Said panel is authorized to proceed with its studies and planning during the disposition of this appeal, to the end that there will be no unnecessary delay in the implementation of the ultimate steps contemplated in the orders of the District Court in event the decision of the District Court is affirmed on appeal. Pending disposition of the appeal, the defendants and the School Districts involved shall supply administrative and staff assistance to the aforesaid panel upon its request. Until further order of this court, the reasonable costs incurred by the panel shall be paid as provided by the District Court's order of June 14, 1972.

Entered by order of the Court.

/s/ James A. Higgins

Clerk

DOROTHY GAUTREAU, et al.,)
)
Plaintiffs,)
) No. 66 C 1459
v.) 66 C 1460
) (Consolidated)
CHICAGO HOUSING AUTHORITY,)
et al.,)
)
Defendants.)

The Court having heard the presentations of the parties, considered the evidence and being fully advised, the Court now makes the following findings of fact, reaches the following conclusions of law, and enters the following orders:

Findings of Fact

1. According to the United States Census ("Census") for 1970, 32.7% of the population of the City of Chicago was Black in that year. (Tr. 85.)
2. According to the 1960 and 1970 Censuses, within the decade from 1960 to 1970 the Black population of the City of Chicago increased by 35% while the White population diminished by 18%. (Tr. 136 of September 28, 1972.)
3. According to the 1950 Census, 13.6% of the population of the City of Chicago was Black in that year. (Tr. 85.)
4. Assuming that the rate of changes in Black and White population, respectively, during the decade from 1960 to 1970 in Chicago continue, by 1984 the population of the City of Chicago will be over 50% Black, by 1990 58% Black, and by the end of the century 70% Black. (Tr. 86.)
5. According to the 1970 Census the student population of the public schools of the City of Chicago was over 56% Black in that year while less than 1/3 of the general population was Black. (Tr. 87.) The proportion of Blacks in the public school population is much greater than the proportion of Blacks in the general population of the City of Chicago because a higher proportion of White families are elderly, childless or have children enrolled in non-public schools. (Tr. 87.)
6. According to Census figures the percent of census

tracts in the City of Chicago having 30% or more Black population was 23.1% in 1960 and 34% in 1970.

7. Assuming that the rate of changes in Black and White population of census tracts, respectively, during the decade from 1960 to 1970 in Chicago continue, by 1990 74% of the census tracts in Chicago will be 30 percent or more Black, and well before 2000 every census tract in Chicago will have at least a 30% Black population. (Tr. 88-89.)

8. Based on such assumptions, there will be no General Public Housing Area (as defined in this Court's judgment order of July 1, 1969) in the City of Chicago at some date well before the year 2000. (Tr. 88-89.)

9. According to the 1970 Census, Blacks comprise about 17% of the population of the Chicago Metropolitan area. (Tr. 95.)

Conclusions of Law

1. The Court has not merely the power but also the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past site selection procedures of CHA and HUD. Louisiana v. United States, 380 U.S. 145, 154 (1965).

2. In this case the Court's duty will not be discharged by a decree which prohibits continued use of discriminatory site selection procedures in the future; the Court has a duty to eliminate the discriminatory effects of the past employment

of such procedures insofar as that is possible.

3. In performing such remedial duty the Court is obligated to take such action as will achieve "the greatest possible degree of desegregation, taking into account the practicalities of the situation," Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 37 (1971), and the Court "may and should consider the use of all available techniques." Davis v. Board of School Comm'rs., 402 U.S. 33, 37, (1971).

4. The scope of the Court's equitable powers to remedy past wrongs is broad, notwithstanding that the necessary remedies may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some. Swann, supra., 402 U.S. at 28.

5. The vitality of these remedial principles is not sapped because granting full relief would take a long time or require further litigation. The Court's duty is to eliminate the past effects of the discriminatory site selection procedures insofar as possible, "root and branch." Green v. County School Board, 391 U.S. 430, 439 (1968).

6. Although the factual situations differ among school, housing, anti-trust and other categories of cases, these constitutional remedial principles apply generally. Relief must be directed to that which is necessary and appropriate in the public interest to "eliminate the effects" of illegal conduct. Ford Motor Co. v. United States, 405 U.S. 562, 573, n. 8 (1972)

(emphasis in original). The Court's duty is to compel wrongdoers to act in a manner that will, so far as practicable, cure the ill-effects of illegal conduct, and such action is not limited to prohibition of the proven means by which the evil was accomplished. United States v. United Gypsum Co., 340 U.S. 76, 88-9 (1950).

7. In the circumstances of this case, particularly the circumstance that the General Public Housing Area in the City of Chicago (as defined in this Court's judgment order of July 1, 1969) will cease to exist at some time well short of the next 27 years, it is not possible for the Court to perform its remedial duty solely within the geographic limits of the City of Chicago. This is one of the "practicalities of the situation" that the Court is obligated to take into account. Swann, supra, 402 U.S. at 37.

8. Under such circumstances, the Court has the power and the duty to consider a metropolitan remedy for relief in this case. Local political boundary lines are matters of convenience, not sovereignty, and the Court has the power to bridge such boundary lines where necessary to perform its duty to remedy the past effects of federal constitutional wrongs. Reynolds v. Simms, 377 U.S. 533, 575 (1964); Haney v. County Board of Education of Sevier County, 410 F.2d 920, 924-25 (8th Cir. 1969); Jenkins v. Township of Morris School District, 279 A.2d 619, 628 (S.Ct. N.J. 1971).

9. The affirmative obligation to seek means of disestablishing state-imposed housing segregation must be shared by all agencies or agents of the state who are charged by law with, and who exercise, official housing functions. Franklin v. Quitman County Bd. of Educ., 288 F.Supp. 509, 519 (N.D. Miss. 1968). Accord: Lee v. Macon County Bd. of Educ., 267 F.Supp. 458, 478-49 (M.D. Ala. 1967) (three judge court), aff'd. sub nom. Wallace v. United States, 389 U.S. 215 (1967); United States v. Texas, 321 F.Supp. 1043, 1056-1057 (E.D. Tex. 1970), 330 F.Supp. 235 (E.D. Tex. 1971), modified and aff'd, 447 F.2d 441 (5th Cir. 1971).

10. The fundamental guarantee of equal treatment at the hands of the State cannot be thwarted by fragmentation of decision making. The United States Constitution recognizes no governing unit except the federal government and the state. Hall v. St. Helena Parish School Bd., 197 F.Supp. 649, 658 (E.D. La. 1961) (three judge court), aff'd, 368 U.S. 515 (1962).

11. The Court is not now called upon to decide whether to order a metropolitan remedy in this case; the Court is only called upon to decide at this time whether it has the power and the duty to consider such a remedy. However, the Court notes that all parties to this case have conceded, at least in principle, that a metropolitan remedy is desirable. (E.g., as to HUD, Tr. 4, 6-7, February 22, 1972; as to CHA, Memorandum of December 21, 1971, p. 27.)

WHEREFORE, IT IS HEREBY ORDERED:

(1) The Court hereby determines that it is necessary and appropriate to consider a metropolitan plan to remedy the past effects of the unconstitutional site selection procedures employed by CHA and approved and funded by HUD.

(2) The Court will keep under advisement the proposed judgment orders of the parties previously filed and will defer a ruling thereon at this time.

(3) Within 45 days from the date hereof HUD and CHA shall, separately or together, file with the Court and serve upon counsel for plaintiffs their recommendations for comprehensive metropolitan-wide relief in this case, including a form of proposed judgment order or orders designed to provide such relief. Such recommendations shall also include a designation of such additional parties, if any, as in the opinion of HUD or CHA, as the case may be, should be joined as additional parties to the action to make the proposed relief effective. In the case of HUD such recommendations shall include such consideration of programs other than the conventional public housing program as in HUD's judgment may appropriately be employed to effect full relief in this case.

(4) The Court is of the opinion that paragraph (1) of the ordering portion of this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from such portion of this

order may materially advance the ultimate termination of this litigation, all as provided in 28 U.S.C. §1292(b).

E N T E R :

JUDGE

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
v.	)	66 C 1460
	)	(Consolidated)
CHICAGO HOUSING AUTHORITY,	)	
et al.,	)	
	)	
Defendants.)	)	

NOTICE

TO: Patrick W. O'Brien, Esq.
231 S. La Salle Street
Chicago, Illinois 60604

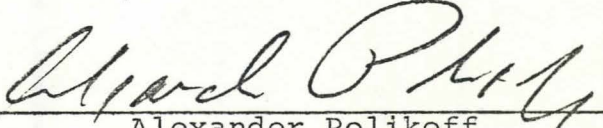
Richard L. Curry, Esq.
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511 City Hall
Chicago, Illinois 60602

James C. Murray, Esq.
Assistant U.S. Attorney
219 S. Dearborn Street
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Monday, January 29, 1973, I
filed with the Clerk of the United States District Court
the attached motion, memorandum and proposed order.

January 29, 1973

Alexander Polikoff
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570



Alexander Polikoff
One of the Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Alexander Polikoff, one of the attorneys for plaintiffs, hereby certifies that he served a copy of the foregoing notice and the motion, memorandum and proposed order referred to therein upon the persons named in the notice at the addresses there shown, by mailing a copy of the same to them this 29th day of January, 1973.


Alexander Polikoff