

Milliken v Bradley

The Northern Battle for Desegregation



By Samantha Meinke

Verda Bradley worked hard to ensure a bright future for her children.

After growing up under the restrictions of Jim Crow laws in Knoxville, Tennessee, Bradley moved to Detroit seeking greater freedom and economic stability.

She was not alone. In 1940, two years before she arrived in Detroit, African Americans made up 9.2 percent of the city's population. Just under 30 years later when her children entered school, almost 500,000 more African Americans had moved to the city, swelling their ranks to 44.5 percent of the population.

A steady decline in the city's job market kept Bradley living in working-class poverty in a Detroit consumed with increasing racial tension. She hoped education would provide a path to a brighter future for her sons, Ronald and Richard. But she was bitterly disappointed when she enrolled them in Detroit's DeWitt Clinton School.

In 1954, the United States Supreme Court declared de jure racial segregation in schools

illegal in *Brown v Board of Education*, but segregation in Detroit's schools continued to increase.

DeWitt Clinton School's population went from 10 percent black to nearly 100 percent black in the 1960s. Textbooks were out of date and class sizes expanded to as many as 50 students; classes were held in trailers on the schoolyard because the building was falling apart.

"Their situation was typical of what was happening in northern and particularly urban school districts," said Nathaniel R. Jones, a retired judge from the U.S. Court of Appeals for the Sixth Circuit and the NAACP's general counsel from 1969 to 1978. "These children were kept in schools that the Supreme Court said...were unconstitutional."

Bradley and many other African Americans in Detroit believed integrating the city's schools was the best way to ensure their children an education equal to that of the city's white students.

Movement Toward Change

To stymie the growing racial polarization of Detroit, four of the Detroit Board of Education's six members passed an integration and decentralization plan on April 7, 1970.

Bomb scares and death threats followed, and a group of whites called Citizens' Committee for Better Education successfully lobbied to recall all four pro-integration board members. The state legislature passed Public Act 48, a bill proposed by Sen. Coleman Young that voided the April 7 plan and placed school districts under control of local neighborhoods.

In response, Verda Bradley and other parents gathered at the Detroit branch of the NAACP to call for action.

On August 18, 1970, the national NAACP, under the leadership of General Counsel Nathaniel Jones, filed a case in the Federal District Court for the Eastern District of Michigan against Gov. William Milliken, Attorney

General Frank J. Kelley, State Superintendent of Public Instruction John W. Porter, the Michigan Board of Education, the Detroit Board of Education, and the Detroit school superintendent on behalf of Ronald and Richard Bradley, the Detroit branch of the NAACP, and parents of all minority children attending Detroit public schools. The suit called Act 48 unconstitutional, said official policies had segregated Detroit's schools, and sought to reinstate the April 7 plan.

The case went through two preliminary rounds in District Judge Stephen J. Roth's courtroom and the U.S. Court of Appeals for the Sixth Circuit. The first round ended when the Sixth Circuit declared Act 48 unconstitutional because it nullified the local district's attempt to comply with the federal desegregation mandate. In the second round, the Sixth Circuit affirmed a magnet school integration plan, but it also sent the case back to district court for arguments on whether the Detroit Board and state government had practiced de jure segregation.

Segregated Housing, Segregated Schools

The 41-day trial began April 6, 1971.

Expert witnesses testified that African Americans could not live wherever they chose.

"Policies of the Federal Housing Administration, the Veteran's Administration, the Home Owners' Loan Corporation, and the practices of real estate associations, banks, and other lending institutions all combined together to create a racially segregated housing market in Detroit and in the suburbs," said Joyce Baugh, a Central Michigan University political science professor and author of *The Detroit School Busing Case: Milliken v Bradley and the Controversy over Desegregation*. "Suburban schools didn't have to write policies to keep black children out because housing policies already took care of that."

The NAACP argued that both the Detroit Board and state government actively increased school segregation by implementing an optional attendance zone policy, building new schools in white neighborhoods, and drawing boundaries that created the most racially segregated schools possible. Then they made a radical proposal: in order to actually integrate Detroit's schools and not just escalate "white flight," the plan

would have to reach beyond the city's limits to include white students in the suburbs in an inter-district busing desegregation plan.

In September 1971, Judge Roth found school and housing segregation interdependent and caused by government policies at all levels, and found the Detroit Board and the state responsible for school segregation. On June 14, 1972, the Detroit Board submitted a preliminary proposal for an inter-district remedy, with 53 metropolitan school districts participating in a cross-district busing integration plan.

The Sixth Circuit affirmed this, but only on the basis of correcting the segregation caused by discriminatory school policies. It would not weigh in on the relationship between housing discrimination and school segregation, based on a precedent set in its 1966 ruling in *Deal v Cincinnati Board of Education*.

Supreme Court Takes Up the Case

The state and suburbs appealed to the United States Supreme Court and argued on February 27, 1974, that beyond the defunct

Act 48, they had not formed any policies of segregation in metropolitan Detroit schools.

"My theory was that the remedy was too broad and too overwhelming to be applied to a situation of isolated discrimination," former Michigan Attorney General Frank J. Kelley said. "The remedy was fraught with implications that went far beyond the problem they were trying to address."

The NAACP argued that black children had been separated from surrounding white neighborhoods and schools by an official line, and that the government now proposed to make that line the boundary of the Detroit school district. The Detroit Board's attorney, George Roumell, submitted a brief to support the NAACP.

In a 5-4 decision issued July 25, 1974, the United States Supreme Court reversed and remanded the decisions of the district and appeals courts, saying there was "no showing of significant violation by the 53 outlying school districts and no evidence of any inter-district violation or effect." They called the lower court's ruling "wholly impermissible" and not justified by *Brown*. The court also ruled that desegregation did not require

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MICHIGAN LEGAL MILESTONE

Milliken v Bradley—Desegregation, Busing Boundaries

School desegregation became the law of the land after the United States Supreme Court's 1954 decision in *Brown v Board of Education*. Two years later, the Supreme Court issued another landmark decision in a Detroit school desegregation case, *Milliken v Bradley*, which greatly impacted the city's desegregation efforts and changed the course of school desegregation in the United States.

“any particular racial balance in each school, grade or classroom” and emphasized the importance of local control over the schools.

Justices Byron White, William Douglas, and Thurgood Marshall each wrote dissents.

“The Court has conjured up a largely fictional account of what the District Court was attempting to accomplish,” wrote Justice Marshall in the principal dissent. “The District Court determined that inter-district relief was necessary and appropriate only because it found that the condition of segregation within the Detroit school system could not be cured with a Detroit-only remedy.”

The Supreme Court remanded the case to the district court to create a Detroit-only desegregation plan.

The plan that was approved in *Milliken v Bradley II* called for the state to contribute 50 percent of the funding for teacher training, guidance counseling training, and enhanced reading programs in an effort to improve education in the city. The Sixth Circuit affirmed this, as did the Supreme Court on June 27, 1977.

Consequences of the Case

Milliken v Bradley brought the condition of education in Detroit to light.

“The educational components [of *Milliken II*] did enhance educational opportunity in Detroit,” Roumell said. “Whether the issue was minority children or socioeconomic factors, the fact is the courts were on the forefront of the need to address urban educational needs.”

But it didn't improve Detroit's plight.

“Busing accelerated the out-migration of middle-class whites from the city to the suburbs, reducing the tax base and income to support local retail outlets, and creating housing vacancies,” said John Mogk, a professor emeritus of Wayne State University Law School who was appointed to the Detroit Board of Education by Gov. Milliken to replace one of the four recalled pro-integration members. “If the Supreme Court had sanctioned a regional school integration plan... white flight would have been discouraged and Metro Detroit would not be the most segregated region in the U.S. today.”

Consequences of the case have made an impact across the nation.

“*Milliken* has made it very difficult, if not impossible, to have any really meaningful school desegregation in metropolitan areas of the country,” Baugh said. “What it basically said is segregation that is present, that is clearly related to government policy... can't be remedied by the courts. You can't

look at public education today and not wonder what would have happened if the court had decided this case the other way.” ■

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“*Milliken v Bradley—Desegregation, Busing, and Boundaries*” is Theme of State Bar's 36th Michigan Legal Milestone

Milliken v Bradley, a historic 1974 United States Supreme Court case that addressed the planned desegregation of schools and busing in Detroit and its suburbs, is the subject of the State Bar of Michigan's 36th Michigan Legal Milestone.

A panel of speakers with diverse viewpoints will reflect on the significance of the case and its continuing impact on southeastern Michigan schools at a dedication ceremony and noon luncheon on Friday, September 16, at the Hyatt Regency in Dearborn. The event will be held in conjunction with the SBM Annual Meeting.

A bronze plaque outlining the issues in “*Milliken v Bradley—Desegregation, Busing, and Boundaries*” will be unveiled at the end of the ceremony and installed later at a suitable location. State Bar President W. Anthony Jenkins and Executive Director Janet Welch will share the duties of master of ceremonies. Speakers are:

- Joyce Baugh, professor of political science, Central Michigan University, and author of *The Detroit School Busing Case: Milliken v Bradley and the Controversy over Desegregation*
- Thomas M. Costello Jr., president/CEO, Michigan Roundtable for Diversity and Inclusion
- Hon. Nathaniel R. Jones, who argued this case on behalf of the NAACP in the United States Supreme Court
- Frank J. Kelley, former Michigan attorney general who argued this case in the United States Supreme Court
- John Mogk, emeritus professor, Wayne State University Law School
- Daniel R. Ray, professor, Thomas M. Cooley Law School
- George T. Roumell Jr., who argued this case on behalf of the Detroit Board of Education in the United States Supreme Court in 1977, and founder of the Michigan Legal Milestones program
- William Saxton, counsel, director emeritus, and former chairman and CEO of Butzel Long, who argued the case on behalf of the suburban school districts

The Michigan Legal Milestones program recognizes significant cases and personalities in our state's history. This year marks the program's 25th anniversary. It is overseen by the SBM Law-Related Education and Public Outreach Committee, co-chaired by Jeffrey Paulsen and Margaret Krasnoff. The Wolverine Bar Association, led by Brandy Y. Robinson, is the State Bar's partner in the *Milliken v Bradley* milestone dedication.

For details, please contact SBM Media and Public Relations Manager Naseem Stecker at (517) 367-6428 or nstecker@mail.michbar.org. For more information about the Michigan Legal Milestones program, visit <http://www.michbar.org/programs/milestones.cfm>.