Supreme Court of the United States  
Washington, D.C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 3, 1974

Re: No. 73-434 - Milliken v. Bradley

Dear Chief:

As I told you on the telephone, I am with you in this case, and the following suggestions are designed only to make even more clear what I think is the basic thrust of your opinion — that without a cross-district violation, there cannot be a cross-district remedy. Your opening paragraph is very strong and persuasive, and I would be sorry to see you tinker with it and would not think of trying to tinker with it myself; but because it accurately describes the case as lacking all four of the elements which it sets forth, there is the possible implication, unless strongly negatived somewhere else in the opinion, that the presence of any one of the four elements now lacking might be sufficient to support a metropolitan remedy. The following suggestions are my tentative idea on how to make even clearer this basic point.

Page 24, first full paragraph, change the existing first sentence to read something like this: "Federal authority to impose cross-district remedies presupposes a fair and reasonable determination not only that each of the districts to be affected by the remedy has a school system that is segregated by law, but that they have disregarded their own boundaries in seeking to create or maintain such a segregated system."

Same paragraph, change fourth sentence to read as follows: "The District Court went beyond this theory of the case and
mandated a metropolitan area remedy before the intervenors were heard and without permitting any evidence on the intervenors' claim that they were guilty of no violation which had created or maintained unconstitutional discrimination in the Detroit system."

Same paragraph, insert new phrase in next sentence so that it reads as follows: "Thus, to approve the remedy imposed by the District Court on these facts would make racial balance the constitutional objective and standard; a result not even hinted at in Brown I and Brown II which held that the operation of dual school systems, not some hypothetical level of racial imbalance in a geographical metropolitan area consisting of more than one school district, is the constitutional violation to be remedied.

Page 25, first full sentence: Since we conclude that the "incidental findings" by the District Court do not afford a basis for multi-district relief, would it be a good idea to substitute "thought to afford" for "suggesting" in that sentence, in order to make it clear that it is the District Court, and not we, who think the findings afford a basis for such relief?

Page 27, last sentence, insert after the words "276,000 pupils" the phrase "and involving numerous districts which were not parties to the arrangement."

Sincerely,

The Chief Justice

Blind copy to: Mr. Justice Powell
MEMORANDUM

TO: Mr. Justice Powell
FROM: John J. Buckley
DATE: June 5, 1974

No. 73-433, Milliken v. Bradley

I have written some random thoughts on the main deficiencies of the opinion above. Some of the points need more explanation, but I thought you would want these comments as expeditiously as possible.

I.

/ In pp. 18-23, the opinion states that the district court erred in attempting to impose a desegregation remedy requiring a "fixed mathematical racial balance" for each school. In my view, this entire discussion is largely irrelevant. It is premised on an unstated assumption that we are confronted with a single school district and that the question is whether, once a finding of de jure racial segregation is made, a court must order implementation of a desegregation plan requiring that each and every school within that school district reflect the racial composition of the district as a whole. Swann answered that question, and it is not involved here. Rather, the present question is whether, and under what circumstances, an inter district remedy is constitutionally required. The opinion proceeds as if only a
single school district were involved and attempts to define the remedy within that context. This is a serious conceptual error and is dangerously confusing.

The opinion also contains the following statement on p. 21:

"Here, it was assumed by both courts, without supporting evidence, that a member of a racial or ethnic minority who attends a school in which his or her minority group is predominant is in some way injured and thereby receives a lesser quality of education. Assuming that racial balance to avoid this presumed injury is desirable on broad social or educational grounds, school authorities can rationally make that choice but it is not a constitutional requirement."

This plainly mischaracterizes the nature of the holding of the courts below. Their theory was that racial imbalance, when imposed as a result of state action, results in a constitutional injury to the school children against whom the discrimination occurred. Brown I established that principle. The error of the courts below was not the one stated in the opinion. Rather, it was in finding that there was sufficient state action to permit or require an interdistrict remedy. And that is the ground on which the holding below must be addressed.
II.

In pp. 24-25, the opinion attempts to articulate the prerequisites for an interdistrict remedy. The opinion states that an interdistrict remedy presupposes a determination that there has been a violation by "all the districts affected by the remedy" and that such a remedy "might be appropriate, for example, if it could be established that the segregatory practice of one or more districts created or maintained the segregated condition within the central remedy." Several points come to mind. First, I would think it essential to state the standard to be applied in determining whether a school district is racially segregated as a result of state action. Presumably, this would be the Keyes standard which requires a finding of intentional discrimination. Second, it should be emphasized that there must be a finding that the discriminatory acts of the suburban school districts contributed substantially to the racial imbalance of the city school district. In other words, there must be an interdistrict effect resulting from the discriminatory actions of the suburban school district. I would also think that some specific examples would be helpful. See., e.g., p. 14 of Brief for the United States as Amicus Curiae. Third, I wonder if it might not be appropriate to restate the Swann principle that the scope of the remedy is determined by the scope of the constitutional violation. I am referring not to "busing,"
but to the commonsense notion that the more serious the violation, the more extensive the remedy required to eliminate the effects of the violation.

III.

In pp. 25-27, the opinion addresses the findings made by the district court as the basis for an interdistrict remedy. It fails to confront and rebut one of the main arguments of respondents, namely, the "agency theory." In essence, respondents contend that the constitutional violations of the Detroit school board are attributable to the State, and further, that the State's violations are attributable to the independent suburban school districts. This argument is premised on the assumption that all school districts are basically instrumentalities of the State. Moreover, since they are regulated by, and receive funds from, the State, these districts are necessarily "partners" or "joint participants" in any constitutional violation.

I have other comments, but these are the main ones.

JJB
June 5, 1974

No. 73-437  Milliken v. Bradley

MEMORANDUM TO THE CHIEF JUSTICE:

In accordance with your request, I submit comments on your preliminary, xeroxed draft of May 31. I am not unmindful of the inherent complexity of identifying and defining the issues in this difficult case or of the problem of dealing with the enormous record. Accordingly, I am sure you will accept my comments in the uncritical spirit in which they are offered and also as reflecting only my preliminary impressions of the draft - impressions which will probably change as your work on the case progresses.

In any event, and for what they are worth, I submit the following:

1. In the broadest sense, this case is viewed as the test case to resolve two burning issues of great public
concern: (i) what conditions, if any, would justify a federal court in ordering "consolidation" of two or more school districts or parts thereof for the purpose of achieving racial desegregation; and (ii) assuming that conditions do justify such a court order, what are the limitations, if any, upon the power of a federal court to order extensive interdistrict transportation to achieve desegregation?

These, stated in quite general terms, are the broad issues involved. The draft opinion, as I read it, deals summarily and not entirely clearly with the first of these issues. It does not mention transportation or busing at all.

2. As to whether and when interdistrict remedies * may be ordered, I commend to you the Solicitor General's amicus memorandum. At Conference, each of us who voted

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* I will equate the popular term "consolidation" with "interdistrict remedies", which necessarily involve consolidation - in varying degrees - of the functions and responsibilities of two or more separate school districts.
to reverse expressed a significant degree of approval of the SG's analysis. The draft opinion finally comes close to this analysis, but is pretty much limited to the condensed discussion on page 24 of the xeroxed draft.

3. The principal concern of the draft is with the racial balance issue. I agree that the courts below concluded that this was the appropriate remedy for the segregated condition in Detroit, and that the only means of achieving it was partial consolidation of some 53 other school districts with the Detroit district. But it seems to me that an analysis based on racial balance misses the core issue. Assume, for example, that the DC - instead of decreeing what in effect was mathematical racial balance - had concluded that the remedy for the segregated condition in Detroit was consolidation with the surrounding districts, but had expressly also held that racial balance was not necessary? Putting it differently, busing - as noted in Swann - is only one tool of desegregation; there could have been a consolidation decree with the DC merely saying that the consolidated district should proceed to desegregate the schools therein in accordance with the Court's opinion in Swann - expressly disclaiming any necessity for racial balance.
I thus conclude that whether the DC ordered racial balance or not is essentially immaterial to the basic issue in this case, namely, whether and under what circumstances a federal court may order a consolidation of school operations in disregard of established school districts pursuant to state law.

4. As the draft recognizes, before a DC may inject itself into the manner in which a state and school districts operate the public schools, there must be a constitutional violation. Here the only violation found was by and within the Detroit district, namely, the operation there of a segregated school system. There was no finding that the violation within the City had been caused or contributed to in any way by action of the other 53 districts sought to be consolidated or indeed by any one of them. Nor was there any evidence that the violation within the City had caused or contributed to unlawful segregation in these neighboring districts. This Court has never held that a constitutional infringement within one school district, without implicating in some significant manner another school district, justified remedies beyond
and outside of the offending district. We are asked in this case to do precisely that. Five members of the Court are willing to say - and I think we should say it explicitly - that the Constitution requires no such extra district or interdistrict remedy.

5. In this connection, it is important to bear in mind the difference between states which, for historic and other reasons, practiced school segregation, and on the other hand states (of which Michigan may be one) in which there is no past history of segregated schools. For example, in the Richmond case, both Chesterfield County and the City of Richmond had de jure segregation in accordance with Virginia law until compelled by Brown and subsequent cases to take affirmative action to desegregate. Four members of the Court in Bradley were of the opinion that the mere fact that these two adjacent school districts had formerly practiced segregation did not in itself justify consolidation or interdistrict remedies. Some interdistrict violation was required.

I will mention specific examples below, but stated in general terms there must be a showing that Detroit and the adjoining district or neighboring districts acted in
concert to further or maintain desegregation.

As the Solicitor General put it:

"... an interdistrict remedy, requiring the restructuring of state or local government entities, is appropriate only in the unusual circumstance where it is necessary to undo the interdistrict effect of a constitutional violation. Specifically, if it were shown that the racially discriminatory acts of the State, or of several local school districts, or of a single local district, have been a direct or substantial cause of interdistrict school segregation [with Detroit], then a remedy designed to eliminate the segregation so caused would be appropriate." (S.G's Br. 13-14)

The Solicitor General then cited the following examples:

"One example of circumstances warranting interdistrict relief is where one or more school systems have been created and maintained for members of one race. See, e.g., United States v. Texas, 321 F. Supp. 1043 (E.D. Texas) affirmed, 447 F. 2d 441 (C.A. 5), certiorari denied sub nom. Edgar v. United States, 404 U.S. 1016; Haney v. County Board of Education of Sevier County, 429 F. 2d 364 (C.A. 8). Similarly, where the boundaries separating districts have been drawn on account of race, an interdistrict remedy is appropriate. See, e.g., United States v. Missouri, 363 F. Supp. 739 (E.D. Mo.). Some form of interdistrict relief may also be appropriate where pupils have been transferred across district lines on a racially discriminatory basis.

In each instance of an interdistrict violation, the remedy should, in accordance with traditional principles of equity and the law of remedies, be tailored to fit the violation,
Finally, in stating standards, I would reiterate the *Swann* principle that the scope of the remedy is determined by the scope of the Constitutional violation.

6. The draft (p. 25 et seq) addresses the argument that the State itself (State Board of Education, State Legislature and State officials) is responsible, and that the district school boards are mere agencies of the State. You probably have in mind tightening and strengthening the opinion on this point.

A good deal of assistance can be obtained in the brief filed on behalf of the Grosse Pointe public school system, commencing at p. 46.

This Court in all previous cases has looked solely to the local school district. Moreover, as we said in *Rodriguez* (411 U.S. 1), and in other cases (see, e.g., *Emporia*), public education in this country has been organized around the concept of local control. To be sure, a state board of education has certain authority and the state government itself - amending a state constitution where necessary - could exercise a broad control and supervision over the schools. But this would be contrary to our tradition and to the conviction that the values of
local school board autonomy and responsibility are fundamental.

See Footnote 91 in the Grosse Pointe brief for a summary of some of the powers of local boards in Michigan. These are to be borne in mind when one considers the consequences of consolidation or interdistrict remedies. Who then makes all of these decisions? Who, in particular, determines school budgets, the assessment and collection of school taxes, etc? Does the Detroit Board decide this for the other 53 districts? How do 54 school boards work all of these out? In the end, interdistrict remedies really will require consolidation so that a single controlling entity can make the vital decisions as to how much money is required, how to raise it, curricula content, teacher's salaries, etc., etc.

7. The opinion of the Court of Appeals denigrates school districts as little more than lines on a map "drawn for political convenience". This is nonsense for the reasons indicated above, and should be so pointed out in our opinion.

8. The draft conveys the impression, at least to me, of an overriding concern with the way the case was tried
and the failure to afford an effective hearing to the various districts. For example, the draft refers (p. 27) to the "crucial fact that the theory upon which the case proceeded related solely to the establishment of Detroit City violations . . . and that, at the time of trial, neither the parties nor the trial judge were concerned with a foundation for interdistrict relief."

This is quite true, and is a point which is adequately made in Part IV of the draft. I urge you, however, to deemphasize it in the preceding parts of the opinion (except in the statement of facts), as it conveys the impression that we are more concerned about failure to afford hearings to the suburban districts than we are about the fundamental issues. Little purpose will be served by our taking this case merely to remand it for a full rehearing with all parties before the court. Whether we reverse outright or remand, in my opinion, I think we should state unequivocally the standards to be applied on the merits.

9. As to the extent of busing or transporting students for vast distances in the enormous area included within the decree below, I quote the following statement from the SG's brief:

"Moreover, even a finding of some interdistrict violations would not mean
that extensive interdistrict busing should be required as a remedy regardless of its disruptive effects or other costs." Footnote 12, p. 15 S.G.'s Br.

See also the portion of my concurring opinion in Keyes in which I argued (with some force, I thought) that the Constitution does not require busing solely to achieve desegregation.

10. I would certainly pay my respects to the radical nature of the decree approved by the courts below, requiring racial balance in "every school, grade and class". This is just about as absurd as any court decree I have ever read. Racial balance, even if it were constitutionally required, is difficult enough to achieve in each school. It is literally impossible to achieve it within a school in every grade and class. Moreover, even were it possible, the mix would change with each semester. In short, the school officials would spend a large portion of their time counting whites and blacks and juggling them around from grade to grade and class to class, all to no purpose except the neglect of quality education!

* * * * *

Forgive this long-winded and somewhat disjointed commentary. It may not be helpful, but at least I wanted to share these ideas with you promptly.

L.F.P
June 10, 1974

Detroit School Case

Dear Chief:

Perhaps you saw the article in Sunday's Washington Post to the effect that the liberal Republican Governor of Massachusetts has come out in favor of repeal of Massachusetts' racial balance statute, which would require extensive busing by next term.

The news story states that all other candidates for Governor - including a Republican and two Democrats - likewise urge repeal. Senator Brooke, however, still favors the law.

Sincerely,

The Chief Justice

1fp/ss
The controlling principle, continually expounded in our decisions, is that the scope of the remedy is determined by the nature and extent of the constitutional violation. Swann, supra. In the present context, this means that an interdistrict remedy is appropriate only where there has been a significant interdistrict constitutional violation. Specifically, it must be shown that racially discriminatory acts of the State, local school districts, or a single school district, have been a direct and substantial cause of interdistrict school segregation. Thus, for example, an interdistrict remedy might be appropriate where the discriminatory acts of one or more school districts created or maintained the racial segregation of the central city, or where school district lines have been intentionally drawn on the basis of race. In these circumstances, an interdistrict remedy is appropriate and should be designed to eliminate the interdistrict segregation directly caused by the constitutional violation. In this case no showing has been made of any significant interdistrict constitutional violation.
MEMORANDUM

TO: The Chief Justice
FROM: Lewis F. Powell, Jr.

DATE: June 14, 1974

Bradley

I return herewith the revised pages which you gave me this afternoon. These include revised pages 20-25, and an unnumbered page commencing: "Underlying this case. . . ."

I have suggested a few changes of language, of no great consequence, on pages 23 and 25. I have added a rider to page 22, in substitution for the quotation that I originally used from Rodriguez. The rider embodies what seems to me to be a better quote from Rodriguez.

I do not know where you have in mind locating the unnumbered page. It would be out of place, if it followed page 25 and preceded page 26 (where it is now situated in the copy which you gave me). The first part of the single paragraph on the unnumbered page goes back to the "racial balance" question. I suggest - what you no doubt have in mind with respect to location - that certainly this part of the unnumbered page be consolidated with your discussion of racial balance on pages 20 and 21. The second half, roughly, of the unnumbered page comes from material which I gave you. It seems out of place on this page and, if used, should be tied in with the discussion of the disruptive effect
of inter-district remedies.

I hesitate to repeat what I said in my original memorandum to you, but I continue to feel that overemphasis of the racial balance aspect of the case is unnecessary to our decision and also detracts from the force of the inter-district remedy issue. Nevertheless, if Potter and your other constituents are willing to accept the degree of emphasis on racial balance which remains in your draft, I will, of course, be with you. I recognize in this connection that this draft was written late last night by you, without assistance and under very considerable pressure. As you said to me this afternoon, you recognize the necessity for considerable polishing and typing up, to assure a logically consistent flow of the opinion.

Finally, omit the last paragraph remaining on page 25, as it also reverts to racial balance. As noted above it is more effective, I think, to move directly from the discussion of the disruption of the school system to the discussion on page 26 of when an inter-district remedy may be decreed.

Finally, there are two points made in the SG's brief which I would certainly like to see included in our opinion perhaps in footnotes if nowhere else:

1. On page 11 of his brief, the SG states:

"The mere co-existence, within a State, of adjacent school districts having disparate racial compositions is not itself a constitutional violation. Spencer v. Kugler, 404 U.S. 1027, affirming 326 F. Supp. 1235 (D. N.J.)."
2. On page 13, there is the following statement:

"... an interdistrict remedy, requiring the restructuring of state or local government entities, is appropriate only in the unusual circumstances where it is necessary to undo the interdistrict effect of a constitutional violation."

***

Perhaps these suggestions will only add to your problems. Yet, after all you did invite them. If you think I can be of further assistance, please let me know.

L.F.P., Jr.
June 17, 1974

Re: No. 73-434, Milliken v. Bradley

Dear Chief,

I continue firmly to believe that "racial balance" is not a question in this case, and that a discussion of that subject in the Court opinion will serve only to distract attention from the real issue.

"Racial balance" has become something of a code phrase, and perhaps means different things to different people. As I have understood the term, however, it relates to the proper scope of a remedial decree designed to effectuate the dismantling of an unconstitutionally segregated school district. It does not relate to the initial question of whether or not the school district has been unconstitutionally segregated, and it certainly does not relate to some supposed abstract constitutional requirement of a minimum percentage of white students in any school district or any individual school.

Specifically, the "racial balance" question has been whether the objective of a remedial decree to correct an adjudged violation (a) must or (b) may be to produce a situation
where every individual school within the district contains, so far as practicable, the same racial ratio that is contained in the district as a whole -- whatever that ratio may be. So far as I am concerned, this double-barreled question has no categorical answers. For the questions are not questions of constitutional law, but questions for a court of equity. In a small district containing three schools, racial balance in each school might be so easy to achieve and so clearly equitable as to be a virtual requirement of any permissible decree. In New York City or Los Angeles, racial balance in every individual school would obviously be impossible to achieve except at a wholly intolerable social cost.

In short, I think that when a constitutional violation has been found in any school district, the appropriate decree should be largely left to the equitable discretion of the district court -- under the ultimate supervision of the Court of Appeals. This view no more than reflects my understanding of what was said both in Swann and in Brown II many years earlier.
In the present case, however, we deal with quite a different question. We do not have any remedial decree before us. For here the courts have held that even assuming that such an equitable decree could properly accomplish racial balance in every individual Detroit school, the result would be that each school would then be identifiably black. This, in the courts' view, would be an impermissible situation, and the only remedy for that situation, the courts held, was to reach beyond Detroit's boundaries and implicate a large number of outlying school districts in the remedial decree. It is here, and here only, that I think the courts went astray.

The significant facts are these: The respondents commenced this suit in 1970 claiming only that a constitutionally impermissible allocation of educational facilities along racial lines had occurred within the City of Detroit. No evidence was adduced and no findings were made concerning the activities of school officials in districts outside the City of Detroit, and no school officials from the outside districts even participated in the suit until after the District Court had made the initial determination that is the focus of this case.
In spite of the limited scope of the inquiry and the findings, the District Court concluded that the sole sufficient remedy for the constitutional violations found to have existed within the City of Detroit was a desegregation plan calling for busing pupils to and from school districts outside the city. The District Court found that any desegregation plan operating wholly "within the corporate geographical limits of the city" was insufficient since it "would clearly make the entire Detroit public school system racially identifiable as Black." Pet. App. 161a-162a. The Court of Appeals, in affirming the decision that an inter-district remedy was necessary, noted that a Detroit only plan "would result in an all black school system immediately surrounded by practically all white suburban school systems, with an overwhelmingly white majority population in the total metropolitan area."

The courts were in error for the simple reason that the remedy they thought necessary was not commensurate with the constitutional violation found. In particular, there has been absolutely no showing that the disparity in racial composition between schools in the City of Detroit and the schools immediately outside the City was the result of segregation imposed, fostered, or encouraged by the State or any of its subdivisions.
This is not a case where the State has contributed to a separation of the races by drawing or redrawing school district lines, see Haney v. County Board of Education of Sevier County, 429 F.2d 364 (CA 8, 1969); cf., Wright v. Council of City of Emporia, 407 U.S. 451; United States v. Scotland Neck Board of Education, 407 U.S. 484; by transfer of school units between districts, United States v. Texas, 321 F. Supp. 1043 (E.D. Tex., 1970), aff'd, 447 F.2d 441 (CA 5, 1971); Turner v. Warren County Board of Education, 313 F. Supp. 380 (E. D. N. C., 1970); by busing students across district lines; or by purposeful use of state housing or zoning laws. In the absence of such an interdistrict violation, the order directing the formulation of an interdistrict remedy was simply not responsive to the factual record before the District Court and was an abuse of that court's equitable powers.

In Swann the Court addressed itself to the range of equitable remedies available to the courts to effectuate the desegregation mandated by Brown and its progeny, noting that the task in choosing appropriate relief is "to correct . . . the condition that offends the Constitution," and that "the nature of the violation determines the scope of the remedy...." 402 U.S., at 16.
The disposition of this case thus falls squarely under these principles. The only "condition that offends the Constitution" found by the District Court in this case is the existence of officially-supported segregation in and among public schools within the City of Detroit. There were no findings that the fact of differing racial composition between schools in the City and in the outlying suburbs was caused by official activity of any sort. It follows that the decision to include in the desegregation plan pupils from school districts outside Detroit was not predicated upon any constitutional violation involving such pupils. By ordering a plan to reach beyond the limits of the City of Detroit to correct a constitutional violation found to have occurred solely within the City the District Court thus overreached the governing remedial principles developed in this Court's decisions.

The resolution of this case, in my view, rests on a relatively simple proposition: an interdistrict remedy may permissibly be based only upon an inter-district violation.

Sincerely yours,

The Chief Justice

cc: Mr. Justice Blackmun
    Mr. Justice Powell
    Mr. Justice Rehnquist
MEMORANDUM

TO: Mr. John Buckley
FROM: Lewis F. Powell, Jr.

DATE: June 14, 1974

1. The most important thing you can do today - unless the Conference votes to carry Bradley over - is to spend a few hours on that case. The Chief Justice agreed to accept our draft as a substitute for the material from p. 26-25. I submitted our draft as rough and subject to revision, and the Chief indicated that he would use it as the basis for his revision without committing himself to any verbatim use.

It was recognized that what will be left on p. 26 (after we omit from that page the reference to racial balance) is the most important part of the case, as it deals with the basic issue. But it deals with it rather summarily.

Also, there will have to be, I believe, some transition between the draft we submitted to the Chief and what is left on p. 26, as it may be revised.

Accordingly, three things could benefit from your attention: (i) polishing up our draft; (ii) giving special attention to the page 26 issue, as lower federal courts will look primarily to what we say about this issue for future guidance; and (iii) if you have time left over, give some consideration to the transition;

My thought is that if we can come up with something by the end of the day that might help the Chief along, and
keep him in a posture acceptable to other Justices, it would be quite constructive.

Of course, if the case is carried over I will send you a note from the Conference and we can forget it.

2. I do want to add one or more footnotes to Bangor Punta to reply to Marshall. He has fired, at random, a load of birdshot - some remotely relevant but most of them irrelevant. He seems to overlook the fact entirely that the parties for whom he sheds tears (the minority stockholders and creditors) may bring suit on their own behalf; nothing precludes them, and they have asserted no injury.

L.F.P., Jr.
June 18, 1974

Re: No. 73-434 - Milliken v. Bradley

Dear Chief:

Last evening I carefully read Potter's letter to you of June 17. I am in agreement with him and feel that, generally, emphasis on remedy and de-emphasis on racial balance is indicated for this opinion. It may well be that the district judge went astray on racial balance but I, for one, would prefer to give it little more than the necessary passing reference.

You advised me that you have a new draft at the Printer. Perhaps it will do just that, and I look forward to reading it.

Sincerely,

The Chief Justice

cc: Mr. Justice Stewart
Mr. Justice Powell /
Mr. Justice Rehnquist
Re: 73-434 - Milliken v. Bradley
73-435 - Allen Park Public Schools v. Bradley
73-436 - Grosse Pointe Public School System v. Bradley

MEMORANDUM TO: Mr. Justice Stewart
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

I have your several memos and I reiterate what I said in our informal discussion that our differences are essentially semantical. To say that racial balance is not in the case, of course, eludes reality since it was the explicitly articulated basis for the inter-district remedy the court ordered to be formulated.

I do not care what words are used to describe the sequence of events. The draft sent to the printer before I received your memos has now been stripped down regarding the discussion of "racial balance" and it has been confined to one page in which I recite the uncontrovertible fact that the desire for racial balance was the fulcrum from which the District Court proceeded to the error that followed, i.e., mandating an inter-district remedy with no showing of an inter-district violation.

The print shop is "swamped" with Wednesday's opinions but they have only the re-run from page 20 onward, plus minor editorial changes.

I hope it will be available soon.

Regards,
June 19, 1974


Dear Chief:

I think you have made very substantial changes to accommodate the views expressed by the rest of us who voted with you at Conference on this case, and I am prepared to join the draft which you circulated on June 19th. I sincerely hope that we can come out with an opinion for the Court.

Sincerely,

[Signature]

Copy to: Mr. Justice Stewart
Mr. Justice Blackmun
Mr. Justice Powell
June 20, 1974

PERSONAL

Re: 73-434 - Milliken v. Bradley
73-435 - Allen Park Public Schools v. Bradley
73-436 - Grosse Pointe Public School System v. Bradley

MEMORANDUM TO:

Mr. Justice Stewart
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

The balance of the opinion in the above is now ready for circulation. If there are details on which any of you have suggestions, it would seem these could be dealt with in the final "honing" process. I believe I have met the problems raised by Potter's memo.

Meanwhile we should try to circulate the draft to the full Court today if at all possible.

Regards,

[Signature]
June 20, 1974

Re: Nos. 73-434, 73-435, 73-436 - Milliken v. Bradley

Dear Chief:

I agree with Bill Rehnquist's comments that the changes effected in what you circulated to the four of us on June 19 take us a long way toward accommodating the views that have been expressed.

In my judgment, it is imperative that we have a solid majority in this case, and that it would be tragic if the judgment were to come down with several opinions revealing a fractionated court.

In general, I am inclined to go along with what now has been developed. I offer the following, however, as additional (and comparatively minor) suggestions for your consideration.

1. On page 21, in the second line of the paragraph beginning on that page, I would like to eliminate the words "additional and."'

2. As you have undoubtedly noticed, there are typographical mixups in the material at the bottom of page 23 and the top of page 24; specifically, the top line of page 24 belongs above the present sixth from the last line of the paragraph ending on page 23.

3. On page 25, first paragraph, second line, would it be well to insert the words "de jure" before the word "segregated"?

4. The next full sentence in the same paragraph begins with the words "The Court went" and ends with the phrase "with
no showing of significant violation by the 53 outlying school districts." Would it help to have the ending phrase read "with no showing of any significant government responsibility, either state or local, for the interdistrict imbalance." I suggest this because the opinion does not preclude an interdistrict remedy if it is shown that the State itself (in contrast with the district) caused the imbalance.

5. I, for one, could go along with the elimination of Part IV except, of course, the material bringing the opinion to a close.

Sincerely,

[Signature]

The Chief Justice
June 20, 1974

73-434, Milliken v. Bradley, etc.

Dear Chief,

While I do not want to delay the recirculation of your proposed opinion in these cases, I feel obligated to say that I still have serious reservations about some aspects of your partial recirculation of yesterday.

Sincerely yours,

[Signature]

The Chief Justice

cc: Mr. Justice Blackmun
    Mr. Justice Powell
    Mr. Justice Rehnquist
June 24, 1974


Dear Chief:

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference
June 24, 1974

Re: 73-434, Milliken v. Bradley
73-435, Allen Park Public Schools v. Bradley
73-436, Grosse Pointe Public School System v. Bradley

Dear Chief,

I am glad to join your opinion for the Court in these cases.

Sincerely yours,

The Chief Justice

Copies to the Conference
June 24, 1974

No. 73-434 Miliken v. Bradley
No. 73-435 Allen Park v. Bradley
No. 73-436 Groose Point v. Bradley

Dear Chief:

Please join me in your draft of June 21.

I have not had an opportunity to review the draft of June 24, (which just came in), but I understand from your note that it merely embodies in type the penciled in changes reflected in the June 21 draft.

I do have a couple of word changes which I would like to suggest. I can give them either to you or to your clerk, as you prefer. Also, I suggest that you may wish to add, at an appropriate place, a citation to Spencer v. Kugler, cited at page 11 of the SG's brief.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference
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No. 73-434 Miliken v. Bradley
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