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## Trial and Error: The Detroit School Segregation Case

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TRIAL AND ERROR: THE DETROIT SCHOOL SEGREGATION CASE. By *Eleanor P. Wolf*. Detroit: Wayne State University Press. 1981. Pp. 373. \$19.95.

Although school desegregation cases following *Brown v. Board of Education*<sup>1</sup> originally required only racially neutral pupil assignment, more recent cases demand the elimination of "all vestiges of state imposed segregation."<sup>2</sup> In *Trial and Error*, Professor Eleanor Wolf attacks the assumptions that underlie these stricter remedial requirements. Wolf thoroughly examines the Detroit school desegregation case<sup>3</sup> and concludes that the evidence presented was misleading, incomplete, and prejudicial to the Detroit School Board. Had the evidence accurately reflected the available social science research, she asserts, the Detroit school system would not have been found guilty of unconstitutional behavior.

Wolf takes the "scientific" testimony of the expert witnesses in the Detroit case as her starting point. Juxtaposing their testimony with her own analysis of the social science research, she methodically (1) demonstrates that Judge Roth received the misleading impression that residential segregation<sup>4</sup> resulted from state-imposed housing discrimination; (2) undermines the seductive proposition that integration of the schools would eliminate impediments to black children's achievement without harming white children and would generally improve race relations; and (3) shows that it is impossible to prove that the Detroit School Board's actions caused or contributed to persistent segregation in the City's schools.<sup>5</sup>

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1. 347 U.S. 483 (1954).

2. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

3. *Bradley v. Milliken*, 338 F. Supp. 582 (E.D. Mich. 1971). Judge Stephen Roth's finding of segregative constitutional violations by the Detroit School Board led to his ill-fated busing order involving 53 suburban school districts. The Supreme Court limited the remedy to Detroit since the suburban school districts had not been found guilty of constitutional violations. *Milliken v. Bradley*, 418 U.S. 717, 753 (1974).

4. Judge Roth relied, in part, on a finding of state-imposed residential segregation in issuing his widespread busing order. 338 F. Supp. at 587. The Sixth Circuit approved the busing remedy, but expressly rejected residential segregation as a basis for its affirmance. *Bradley v. Milliken*, 484 F.2d 215, 242 (6th Cir. 1973).

5. The term "segregation" is used here to mean racial concentration, whether caused naturally or by governmental action.

Wolf's solid sociological treatment of these issues contrasts sharply with her speculative conclusions. Apparently relying on Judge Roth's strong interest in the testimony (p. 126), she claims that the "proofs of the harm of segregation and the benefits of integration were crucial in motivating the judge to 'find' that Detroit School Board actions caused racially segregated schools, despite the murky and illogical nature of the evidence" (p. 245). Although Wolf concedes that she "cannot prove the point," she compounds her error by suggesting that such evidence has also dictated the result "in some other cases" (p. 245).

Although Wolf's hypothesis is intuitively attractive, there are strong indications that her conclusion may be wrong. She reports, for example, that Roth rejected evidence tending to refute the benefits of integration on the ground that *Brown* had already decided that issue (p. 226). His opinion, consistent with these rulings, did not mention the supposed educational benefits of integration. Roth, moreover, evidently was aware of the law. He expressed disappointment that blame had to be fixed (p. 20), but proceeded to do so. There is no documentary support for Wolf's assertion that the judge's "inclusion of school violations was a reluctant concession to the requirements of legal precedent" (p. 160).

Wolf's eagerness to explain Judge Roth's ruling in terms of his reaction to the questionable social science evidence may stem from her disbelief that the Detroit School Board, lauded for its integration efforts, had caused school segregation. Her characterization of the requirement that segregation be caused by school authorities as a "legal fiction" is apt,<sup>6</sup> but does not complete her argument. Although it does not appear that the actions cited by the court as constitutional violations contributed substantially to school segregation, it also does not appear that Roth ignored the requirement of a causal connection between the School Board's actions and segregation. Roth's ruling, like other Northern cases that have followed it,<sup>7</sup> may be viewed as the logical consequence of prior Southern cases. Roth may have been influenced by evidence that integration was beneficial, but it is equally plausible that he correctly understood the

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6. Wolf is not alone in observing that the causation requirement is illusory. See generally *Dayton School Bd. of Educ. v. Brinkman*, 442 U.S. 526 (1979) (Powell, J., dissenting) (Rehnquist, J., dissenting); *Columbus School Bd. of Educ. v. Penick*, 443 U.S. 449 (1979) (Powell, J., dissenting) (Rehnquist, J., dissenting); *Keyes v. School Dist. No. 1, Denver Colorado*, 413 U.S. 189 (1973) (Powell, J., concurring in part & dissenting in part).

7. The early Southern cases implied causation between past *de jure* discrimination and later school segregation even though *de jure* segregation had been replaced by racially neutral assignment schemes. See, e.g., *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971); *Green v. County School Bd.*, 391 U.S. 430, 437-38 (1968). More recently, *Dayton* and *Columbus* validated district-wide busing remedies for violations similar to those cited by Roth as having segregative effects in the Detroit schools.

*Brown* mandate as requiring only a limited causal connection between school board actions and segregation.

Wolf's frustration with the attenuated causal nexus between past discrimination and present school segregation thus seems more a quarrel with substantive law than with the social science research presented in *Milliken*. Because plaintiffs may rely on the *Keyes* presumption to infer district-wide segregative intent from proof of segregative intent in a meaningful portion of the school district, and on the *Green/Swann* presumption that past discriminatory acts have caused current segregation, it is difficult for school authorities to rebut a prima facie case of unconstitutional segregation. Although Wolf ably refutes the logical conclusion drawn from these presumptions, they provide an alternative, legitimate basis for Roth's ruling.

Because the law provided a basis for Roth's decision, Wolf's conclusion that trial courts are unable to receive and evaluate misleading social science evidence is not persuasive. But she does successfully attack many of the assumptions underlying busing, and the book is thus a partial success. *Trial and Error* offers ample proof that our current solution to a critical social problem is grossly inadequate. It may be, as Wolf observes, that social policy that attains constitutional stature "does not readily reflect new knowledge and more accurate appraisals of its consequences; it is the essence of such rights that they must not depend on such cost-benefit calculations" (p. 296). Whether or not busing is wholly unbeneficial, the right to be bused has become constitutionally enshrined in certain circumstances. Unfortunately, Wolf's assertion that reliable presentation of social science research results might allow judges to formulate more effective policies is unsubstantiated.