It never ceases to amaze me that the courts are so willing to assume that anything that is predominantly black must be inferior. Instead of focusing on remedying the harm done to those black schoolchildren injured by segregation, the District Court here sought to convert the Kansas City, Missouri, School District (KCMSD) into a "magnet district" that would reverse the "white flight" caused by desegregation. In this respect, I join the Court's decision concerning the two remedial issues presented for review. I write separately, however, to add a few thoughts with respect to the overall course of this litigation. In order to evaluate the scope of the remedy, we must understand the scope of the constitutional violation and the nature of the remedial powers of the federal courts.

Two threads in our jurisprudence have produced this unfortunate situation, in which a District Court has taken it upon itself to experiment with the education of the KCMSD's black youth. First, the court has read our cases to support the theory that black students suffer an unspecified psychological harm from segregation that retards their mental and educational development. This approach not only relies upon questionable social science research rather than constitutional principle, but it also [ MISSOURI v. JENKINS, \_\_\_ U.S. \_\_\_ (1995) , 2] rests on an assumption of black inferiority. Second, we have permitted the federal courts to exercise virtually unlimited equitable powers to remedy this alleged constitutional violation. The exercise of this authority has trampled upon principles of federalism and the separation of powers and has freed courts to

pursue other agendas unrelated to the narrow purpose of precisely remedying a constitutional harm.

The mere fact that a school is black does not mean that it is the product of a constitutional violation. A "racial imbalance does not itself establish a violation of the Constitution." United States v. Fordice, 505 U.S. \_\_\_, \_\_\_ (1992) (THOMAS, J., concurring) (slip op., at 2). Instead, in order to find unconstitutional segregation, we require that plaintiffs "prove all of the essential elements of de jure segregation - that is, stated simply, a current condition of segregation resulting from intentional state action directed specifically to the [allegedly segregated] schools." Keyes v. School Dist. No. 1, Denver, 413 U.S. 189, 205-206 (1973) (emphasis added). "[T]he differentiating factor between de jure segregation and so-called de facto segregation . . . is purpose or intent to segregate." Id., at 208 (emphasis in original).

I

It is clear that the District Court misunderstood the meaning of Brown I. Brown I did not say that "racially [ MISSOURI v. JENKINS, \_\_\_ U.S. \_\_\_ (1995) , 8] isolated" schools were inherently inferior; the harm that it identified was tied purely to de jure segregation, not de facto segregation. Indeed, Brown I itself did not need to rely upon any psychological or social-science

research in order to announce the simple, yet fundamental truth that the Government cannot discriminate among its citizens on the basis of race. See McConnell, Originalism and the Desegregation Decisions, 81 Va. L. Rev. 947 (1995).

Segregation was not unconstitutional because it might have caused psychological feelings of inferiority. Public school

systems that separated blacks and provided them with superior educational resources making blacks "feel" superior to whites sent to lesser schools - would violate the Fourteenth Amendment, whether or not the white students felt stigmatized, just as do school systems in which the positions of the races are reversed. Psychological injury or benefit is irrelevant to the

question whether state actors have engaged in intentional discrimination the critical inquiry for ascertaining violations of the Equal Protection Clause. The judiciary is fully competent to make independent determinations concerning the existence of state action without the [ MISSOURI v. JENKINS, \_\_\_ U.S. \_\_\_ (1995) , 9] unnecessary and misleading assistance of the social

sciences.