a district-wide transportation plan had been imposed. Reversing, the Supreme Court reiterated that the remedial powers of the federal courts are called forth by violations and are limited by the scope of those violations. "Once a constitutional violation is found, a federal court is required to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation.'" [1643] The goal is to restore the plaintiffs to the position they would have occupied had they not been subject to unconstitutional action. Lower courts "must determine how much incremental segregative effect these violations had on the racial distribution of the Dayton school population as presently constituted, when that distribution is compared to what it would have been in the absence of such constitutional violations. The remedy must be designed to redress that difference, and only if there has been a systemwide impact may there be a systemwide remedy." [1644] The Court then sent the case back to the district court for the taking of evidence, the finding of the nature of the violations, and the development of an appropriate remedy.

Surprisingly, however, *Keyes* was reaffirmed and broadly applied in subsequent appeals of the *Dayton* case after remand and in an appeal from Columbus, Ohio.[1645] Following the Supreme Court standards, the *Dayton* district court held that the plaintiffs had failed to prove official segregative intent, but was reversed by the appeals court. The *Columbus* district court had found and had been affirmed in finding racially discriminatory conduct and had ordered extensive busing. The Supreme Court held that the evidence adduced in both district courts showed that the school boards had carried out segregating actions affecting a substantial portion of each school system prior to and contemporaneously with the 1954 decision in *Brown v. Board of Education*. The *Keyes* presumption therefore required the school boards to show that systemwide discrimination had not existed, and they failed to do so. Because each system was a dual one in 1954, it was subject to an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and

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[1643] Dayton Bd. of Educ. v. Brinkman, 433 U.S. 406, 420 (1977) (quoting Hills v. Gautreaux, 425 U.S. 284, 294 (1976)).

[1644] Dayton Bd. of Educ. v. Brinkman, 433 U.S. 406, 420 (1977). The Court did not discuss the presumptions that had been permitted by *Keyes*. Justice Brennan, the author of *Keyes*, concurred on the basis that the violations found did not justify the remedy imposed, asserting that the methods of proof used in *Keyes* were still valid. Id. at 421.

[1645] Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979); Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526 (1979).