DOCUMENT RESUME

ED 139 684 SO 009 984

AUTHOR Carter, David G., Sr.
TITLE Social Science Research: A Chronology for Judicial and Legislative Action.
PUB DATE Apr 77
NOTE 24p.; Paper presented at Annual Meeting of the American Educational Research Association (New York, New York, April 3-8, 1977)

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS Bias; *Case Studies; Court Litigation; *Court Role; Data Analysis; Decision Making; *Educational Legislation; *Educational Policy; Elementary Secondary Education; Equal Education; Higher Education; Historical Reviews; Integration Litigation; *Policy Formation; Public Education; *Social Science Research

ABSTRACT

The influence of social science research on educational policy, particularly since the 1954 Brown vs Board of Education decision, has been significant. The paper presents an historical overview of the judicial use of social science data. Three questions are investigated: to what extent has social science influenced judicial decision-making? what has been the evolution of social science as a contributor of evidence to desegregation litigation? and what place will social science play in the future? Legal decisions relating to these concerns are reviewed. Questions are raised regarding the competency of legal officials and policy makers to interpret the data, the utility of research findings for the court when they do not have the entire support of the academic or scientific community, the validity of the research, and the bias of the researcher. The influence of social science research has been most apparent in areas of desegregation, the provision of educational opportunities for children from low income families, and the reform of state educational systems with an eye toward easing the burden of the local property taxpayer. The conclusion is that lawyers and social scientists can play valuable roles in policy making if lawyers concentrate on determining what is relevant in litigation and social scientists on what of the relevant is reliably known. (Author/DB)

***********************************************************************
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
***********************************************************************

المنارة للاستشارات

ED139684

U S DEPARTMENT OF HEALTH.
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

# SOCIAL SCIENCE RESEARCH: A CHRONOLOGY FOR JUDICIAL AND LEGISLATIVE ACTION

By

David G. Carter, Sr.
Associate Professor of Education
The Pennsylvania State University
Division of Education Policy Studies
University Park, Pennsylvania 16802

For

1977
AERA Annual Convention
New York, New York

April 4-8, 1977

SO 009984

> The Life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than syllogism in determining the rules by which men should be governed.[1]

Introduction

The role of social science in policy development has attracted attention for more than five decades. Over that time more and more social science research has found its way into the legal process. It does not overstate matters to say that social science research has had a profound impact upon the nation's educational policies particularly since the Brown v. Board of Education decision.[2] The influence of social science research is not limited to elementary and secondary schools; it extends readily to institutions of higher education.

As a result of this growing impact, researchers, scholars, lawyers, legislators and interested policy-makers have started to seek an understanding of social science data as it affects the development of public policy. There are three areas in education where the influence of social science research is readily apparent: desegregation; the provisions of additional educational opportunities for children from low-income families; and the reform of state educational systems with an eye toward easing the burden of the local property taxpayer.

---

[1] Oliver W. Holmes, Jr. The Common Law. Boston: Little, Brown and Co., 1881, p. 1.

[2] 347, U.S. 483 (1954).

The courts use of evidence based on social science research raises a number of questions. For instance, what utility do research findings have for the court when they do not have the entire support of the academic or scientific community?[3] Although "this is clearly a question of proof for the judge or jury to decide,"[4] there is a need to determine what the effect is "when social scientists testify, with equal conviction, to opposing conclusions about the same fact situation."[5] This leads logically to questions as to whether social scientists should be involved in educational litigation at all.[6] There are some social scientists and officials in the legal system who believe the court is not the proper place to discuss issues which are controversial. Finally, related to the question of appropriateness is the view that judges and lawyers frequently have difficulty interpreting the findings once they are presented, since conflicting research findings will more than likely be introduced. Thus, potential exists for having legal officials reach differing conclusions.

Although social scientists employ a variety of lenses when they scrutinize policy development, desegregation represents the main area where social science data seems to have directly influenced judicial decisions. Moreover, desegregation efforts in places like Boston and Louisville have revealed the need among legal officers and jurist for an understanding of social science findings.

---

[3]Ray C. Rise and Ronald J. Anson. "Social Science and the Judicial Process in Education Cases," Journal of Law and Education. January 1977, 6, p. 1.

[4]Id.

[5]Id.

[6]Id.

Accompanying this concern with desegregation, numerous studies and articles have focused on issues surrounding the improvement of academic achievement among black students and the reduction of racial tension in desegregated cities. In fact, the view that equal educational opportunity resolves the social and economic ills of the nation and hastens racial justice collided sharply with some of the research findings of the late 1960's and early 1970's. As a result, widespread disillusionment set in.

To date, social science researchers studying the effects of desegregation have relied heavily on inadequate controls and have inadequately specified the conditions that characterize the learning environment. The problems of drawing generalizations from such research are compounded by the multiplicity of measures the researchers use to assess the attitudes and personality characteristics of children. Moreover, the validity of many of the measures has been widely questioned. Finally, the inherent bias of the researcher, his method of study, and the development of his hypotheses adds to the ambiguity and confusion surrounding this research.

In light of the potential utility of social science data in the educational policy-making process, it is tempting for social scientists to generalize the significance of their finding too zealously. Danger exists, therefore, wherever social scientists offer more conclusive findings than their data supports.

Since the courts rely increasingly on social science data, my purpose is to provide an historical overview of the judicial use of social science data. In the course of this presentation, I plan to address these three questions: 1) To what extent has social science influenced

or had a role in judicial decision-making? 2) What has been the evolution of social science as a contributor of evidence to desegregation litigation? 3) And finally, what place will social science play in the future?

Before discussing some of the issues underlying the controversy surrounding the use of social science research in legal proceedings, I must establish some parameters by defining what I mean by "legal process," and "social science." In this article, the social sciences refer to sociology, social psychology, anthropology, economics and political science. The scientists in these disciplines all use the scientific method to study man and his society.

The term "legal proceedings" refers to those activities that legislators, judges and lawyers use within the judicial framework. Contrary to some views, legal officials do more than apply principles of law: they also give voice to important social values by attempting to regulate society according to rules they enact. And they use those rules to reach legislative or judicial decisions.

When policy-makers, more specifically those within the legal profession, adopt social science data to arrive at their decisions, they generate certain questions among both their supporters and opponents.

The Debate: Real or Imaginary?

The growing interplay between the field of law and social science has naturally called into question the legitimacy of introducing social science data into judicial proceedings. On the one hand, social scientists sometimes become uneasy about such pragmatic use of social science data. On

the other hand, judicial officials are bothered by the ambiguity of the data and its inevitable qualifications. Despite these concerns, however, there remains a need to determine what the role of social science should be. The differing views need not, in short, remain irreconcilable.

The relationship between the social sciences and the law can be traced back to a statement made by Justice Holmes: "The life of the law has not been logic; it has been experience."[7] Holmes, according to Lochner, "thought it best that the law should be subject to study and examination by those who presumably knew more about social reality than did the judges--perhaps by social scientists."[8]

It is important that the impact social science has on the legal process be viewed just as realistically as the individual decision, more for what it can offer rather than as a cure for the nation's legal ailments. Again, the reason for this word of caution is that many social scientists intend that their research exert some influence on public policy.

Officials in the legal profession are uneasy for another reason. Their uneasiness was eloquently stated by Judge J. Skelly Wright in Hobson v. Hansen:

> . . .the unfortunate if inevitable tendency has been to lose sight of the disadvantaged young students on whose behalf this suit was first brought in an overgrown garden of numbers and charts and jargon like 'standard deviation of the variable,' 'statistical significance,' and 'Pearson product moment correlations.'

---

[7]Holmes, supra note 1.

[8]Philip R. Lochner, Jr. "Some Limits on the Application of Social Science Research in the Legal Process," Law and the Social Order. Summer 1973, p. 816.

> The reports by the experts--one noted economist plus assistants for each side--are less helpful than they might have been for the simple reason that they do not begin from a common data base, they disagree over crucial statistical assumptions, and they reach different conclusions. Having hired their respective experts, the lawyers in this case have a basic responsibility, which they have not completely met, to put the hard core statistical demonstrations into language which serious and concerned laymen could, with effort, understand. Moreover, the studies by both sets of experts are tainted by a vice well known in the statistical trade--data shopping and scanning to reach a preconceived result, and the court had to reject parts of both reports as unreliable because they were biased.
>
> The court has been forced back to its own common sense approach to a problem which, though admittedly complex, has certainly been made more obscure than was necessary. The conclusion I reached is based upon burden of proof, and upon straightforward moral and constitutional arithmetic.[9]

Given the range of problems stated by Judge Wright, it stands to reason that while data from social science research is being used to influence policy-making in education, there is a need to continue trying to resolve some of the complex issues associated with the use of social science research in the legal process.

Social Science Research and Litigation: A Departure

> When a court or an agency develops law or policy, it is acting legislatively. . .and the facts which inform the tribunal's legislative judgement are called legislative facts. . . . Legislative facts are ordinarily general and do not concern the immediate parties. . .whenever a tribunal engages in the creation of law or policy, it may need to resort to legislative facts, whether or not those facts have been developed on the record. . . .
>
> The formulation of law and policy. . .obviously gains strength to the extent information replaces guesswork or ignorance or hunch or intuition or general impressions.[10]

---

[9] 327, F. Supp. 844, 859 (D.D.C., 1971).

[10] Davis. Administrative Law Treatise § 15.03 at 353-54 (1958), cited in Kohn, Supra Note 21, at 136.

Contrary to the popular assumption, the use of social scientists as expert witnesses in judicial matters is not new. They have been called into legal proceedings for some time. Social science findings have frequently influenced public policy or equity decisions. My purpose in this section is simply to review court cases outside the field of education where social science data has received consideration.

In 1856, William A. Smith, Doctor of Divinity and President of Randolph Macon College, submitted to the office of the clerk of the court for the Middle District of Tennessee the lectures entitled The Philosophy and Practice of Slavery. In 1857, the same year the book was published, the Scott v. Sanford[11] case was decided by the United States Supreme Court. While no mention per se of Dr. Smith's book is made in Chief Justice Taney's opinion, Taney did rely upon "the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time. . .when the Constitutions of the United States was framed and adopted."[12]

The use of medical and social science data by Justice Harlan who wrote the majority opinion in Lochner v. New York[13] represented another early instance of adopting "non-legal material"[14] as precedent in the legal process. The case of Muller v. Oregon[15] followed closely after Lochner. In Muller the U.S. Supreme Court addressed itself to the constitutionality of an

[11] 60 U.S. (19 How.) 393 (1854).

[12] Id. at 407

[13] 198 U.S. 45 (1905).

[14] Levin, Betsy and Philip Moise. "School Desegregation Litigation in the Seventies and the Use of Social Science Evidence: An Annotated Guide," Law and Contemporary Problems. Part I, 39, Winter 1975, p. 50.

[15] 208 U.S. 412 (1908)

Oregon statute which limited the maximum hours of employment for women. In violation of the statute the manager of a laundry required females to work more than ten hours a day. The state's right to regulate the working hours of women rested on its policy power and the right to preserve the health of the women of the state. In this case Louis Brandeis filed what has come to be called the "Brandeis Brief" favoring the constitutionality of the statute under question. Brandeis supported his position by relying upon such sources as surveys, factory reports, medical opinions, employee and employer interviews, governmental reports and various statistics.[16] Thus, the Court decided that "the two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing and the influence of vigorous health upon the future well-being of the race."[17]

In Shelley[18] which is a companion case to McGhee v. Sipes[19] addresses the question of whether private agreements made with the express purpose of excluding persons of designated race or color from the use or occupancy of real estate for residential purposes violated the Fourteenth Amendment?

Although it was not readily apparent, sociological data were introduced at practically every crucial step in the legal process beginning with the

[16] Id.

[17] Id. at 422

[18] 334 U.S. 1 (1948).

[19] Id.

trial court arguments to the United States Supreme Court in Shelley v. Kraemer and Hurd v. Hodge[20] cases both of which invited the Court to develop a "new legal rule for these cases."[21] The social science data also was offered to depict the negative effects racial ghettos have on those residing there. There followed a whole chain of cases in which social science research was introduced in court proceedings--cases concerned with such issues as the rights of juvenile delinquents,[22] capital punishment,[23] legal insanity rules,[24] illegal use of test examinations,[25] obscene literature,[26] and racial discrimination.[27] But the area that has received the most attention has been school desegregation.

Social Science Evidence: Its Impact on School Desegregation Cases

The result of social science research into segregation began to appear in the late twenties and Professor Otto Klineberg conducted his now classic study during the thirties on racial differences. Klineberg found that the differences between races are largely attributable to environment.[28] In 1948 Deutscher and Chein polled 849 anthropologists, psychologists, and sociologists eliciting their opinions on the social effects of segregation;

[20] 334 U.S. at 24.

[21] Janet G. Kohn, "Social Psychological Data, Legislative Fact, and Constitutional Law," The George Washington Law Review. 29, October 1960, p. 137.

[22] In re Gault, 387 U.S. 1 (1966).

[23] Furman v. Georgia, 408 U.S. 238 (1972).

[24] Durham v. United States, 214 F. 2d. 862 (D.C.C. 1954).

[25] Griggs v. Duke Power Company, 401 U.S. 424 (1971).

[26] Commonwealth v. Isenstadt, 62 N.E. 840 (1945).

[27] Perez v. Lippold, 198. P. 2d. 17 (1948).

[28] Herbert Hill and Jack Greenberg. Citizen's Guide to Desegregation, Beacon Press, 1955, p. 89.

they were almost unanimous in their view that segregation was harmful.[29] During the early fifties, Dr. Kenneth B. Clark reviewed a large portion of the research on segregation for the Mid-Century White House Conference on Children and Youth.[30]

One of the more interesting cases in which psychological testimony was used is Mo Hock Ke Lok Po v. Stainback.[31] The case concerned a statute enacted by the legislature of Hawaii that prohibited any school from teaching a foreign language to any child under nine years of age. The statute was challenged by Chinese language schools, by various teachers of Chinese, and by parents desirous of having their children taught Chinese. The territorial legislature offered a psychologist, a psychiatrist and an educator who testified that the basis for the statute was reasonable in that youngsters of average intelligence might suffer emotionally from the strain and might, as well, have difficulty mastering their English studies.

Admittedly, the case relying on sociological-psychological insights that has received the most attention is Brown v. Board of Education.[32] But the first recorded use of social science findings in education commenced with the introduction of anthropological data in Sweatt v. Painter,[33] the

[29] Max Deutscher and Isidor Chein. "The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion," Journal of Psychology. 36, 1948, p. 259.

[30] Hill and Greenberg, supra note 28.

[31] 74 F. Supp. 852 (D. Hawaii 1947), rev'd 336 U.S. 368 (1949).

[32] 347 U.S. at 483.

[33] 339 U.S. at 629 (1950).

famous Texas Law School case. In this case, expert testimony based on social science findings attacked the basis for segregation at the professional school level as unreasonable. Further expert testimony rejected the relationship between race and intelligence as being invalid and raised questions regarding "the appropriateness of segregation to the purposes of education"[34] in general. More specifically, the court in Sweatt stated:

> This case is believed to present for the first time in this Court a record in which the issue of the validity of a state constitutional or statutory provision requiring the separation of the races in professional schools is clearly raised. It is the first record which contains expert testimony and other convincing evidence showing the lack of any reasonable basis for racial segregation at the professional school level, its inherent inequality and its effect on the students, the school and state.[35]

Other cases that adopted the social science data presented in Sweatt include McLaurin v. Oklahoma State Regents[36] and Henderson v. United States.[37] The McLaurin case concerned a student who, although admitted to a university, was segregated from its white students.

The question whether rules and practices which divide each dining car so as to allot ten tables exclusively to white passengers and one to Black passengers violated § 3 (1) of the Interstate Commerce Act. This particular section makes it unlawful for a railroad in interstate commerce "to subject any particular person. . .to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."[38]

---

[34] Kohn, supra note 21, at 140.

[35] Sweatt v. Painter, Petition for cert., p. 2.

[36] 339 U.S. 637 (1950).

[37] 339 U.S. 816 (1950).

[38] 54 Stat. 902, 49 U.S.C. § 3 (1).

The court ruled that such discriminatory practices did violate the Act.[39]

The dicta provided by the expert witnesses in Sweatt supported the view in McLaurin that segregation had psychologically harmful effects on both blacks and whites.

The Sweatt findings also appeared in Tudor v. Board of Education,[40] a church-state case. In 1952 "The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement" by sociologists, anthropologists, psychologists and psychiatrists who had worked in the area of race relations was affixed to appellants' briefs challenging the validity of state legislation that denied black students an equal educational opportunity. The Court, in fact, found unequal educational opportunity as a violation of the equal protection clause of the Fourteenth Amendment.

Such testimony by the expert witnesses on the effects of segregation gave rise to new interest in desegregation, and this interest increased communications between lawyers and social scientists[41]

> More and more, law is concerned with problems affecting great portions of our population, usually problems of what is called "public law." Lawyers had already been calling on social scientists for aid in public-law cases. But would it not be well to use the findings of social scientists wherever they would be competent to help? The school segregation cases have stimulated greater interchange between the two fields.[42]

In the first Brown case, more than forty psychologists, psychiatrists, educators and sociologists appeared before the Court as expert witnesses in

---

[39]339 U.S. at 826.

[40]100 A 2d 857 (1953).

[41]Hill and Greenberg, supra note 28, at 92.

[42]Id.

the four original school desegregation cases,[43] later combined into a single case.[44] The testimony of the expert witnesses, which would have filled some four volumes, focused on three distinct questions: 1) whether segregation has a harmful effect on children; 2) whether there are inherent intelligence and learning differences determined by race; and 3) whether desegregation must always be accompanied with violence.[45]

A social psychologist, Dr. Kenneth B. Clark, serving as chief consultant to the NAACP legal staff, established a pattern of testimony along the following lines:

1) Racial classification for the purposes of education segregation was arbitrary and irrelevant since the available scientific evidence indicates that there are no innate racial differences in intelligence or other psychological characteristics.

2) Contemporary social science interpretations of the nature of racial segregation indicate that it blocks communication and increases mutual hostility and suspicion; it reinforces prejudices and facilitates rather than inhibits outbreaks of racial violence.

3) Segregation has detrimental personality effects upon (black) children which impair their ability to profit from the available educational facilities. Segregation also has certain complex detrimental effects upon the personality and moral development of white children.

4) If non-segregation can work on the graduate and professional level, it can work equally well on the elementary and high school level since children at this stage of development are more flexible in their attitudes and behavior.[46]

---

[43] Brown v. Board of Education of Topeka, 98 F. Supp. 797 (D. Kan. 1951); Briggs v. Elliott, 103 F. Supp. 920 (E.D.S.C. 1952); Davis v. County Board, 103 F. Supp. 337 (E.D. Va. 1952); Gebhart v. Belton, 91 A. 2d. 137.

[44] Brown v. Board of Education, 347 U.S. 483 (1954).

[45] Hill and Greenberg, supra note 28, at 88-89.

[46] Kenneth B. Clark. The Social Scientists as an Expert Witness in Civil Rights Litigation. Social Problems. June 1953, p. 7.

While these cases were being argued it is important to remember that the attorneys for the plaintiffs and defendants utilized social science finding throughout their arguments both inviting expert witnesses to testify and/or by cross-examining them.

The Initial Argument

Although the cases from Delaware, Kansas, South Carolina and Virginia were concerned about the same issue, segregation, each state filed separate briefs with the Court. However, only in Briggs v. Elliot,[47] Brown v. Board of Education of Topeka[48] and Davis v. County School Board[49] that a single document was put together by some of the nation's leading social scientists. In this document the social scientists sought to provide the Court with their thinking on the effects of segregation and the consequences of desegregation drawn from an extensive analysis of research on the subject. This comprehensive document was entitled "The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement."[50] More specifically the statement was addressed to "factual issues involved with respect to which certain conclusions seem to be justified on the basis of the available scientific evidence."[51] The question is "whether we can justifiably conclude that, as only one feature of a complex social setting, segregation is in fact a significantly contributing factor to these effects."[52] The social scientists went on to answer their own question by stating that

[47] 103 F. Supp. 920 (E.D.S.C. 1952).

[48] 98 F. Supp. 795 (D. Kan. 1951).

[49] 103 F. Supp. 337 (E.D. Va. 1952).

[50] Minnesota Law Review, 37, Mary 1973, p. 427.

[51] Id.

[52] Id. at 432.

environment can have a negative effect on members of minority groups, especially when the members are aware of the prevailing social status difference.[53] "While there are many other factors that serve as reminders of the differences in social status, there can be little doubt that the fact of enforced segregation is a major factor."[54]

In 1953 when the reargument of the Brown cases took place Dr. Clark testified on the results of the psychological testing of children in the Virginia, Delaware and South Carolina cases. Furthermore, testimony on the negative effects of segregation in the Delaware case was given by Dr. Frederick Wertham, a psychiatrist.

Dr. Clark went on to work with the social scientists to write about what had been learned about "gradual" versus "forthwith" desegregation. Published in 1953, their results revealed that a variety of techniques had been employed to bring about desegregation. They also focused on consequences of segregation as well as the problems associated with changing from segregated to unsegregated practices.[55]

The Decision

It is difficult, if not impossible, to determine what impact the findings from social science research had on the final outcome of the Court decision in Brown,[56] especially since no where in the Court's deliberations can one point to a recitation of the data presented by the social scientists.

[53] Id.

[54] Id.

[55] Id. at 427-439.

[56] Kenneth B. Clark. "Desegregation: An Appraisal of the Evidence," Journal of Social Issues. 9, 1953, Entire Issue.

Admittedly, considerable debate has ensued as to whether the ruling in Brown relied to any extent on Footnote Eleven of the opinion[57] or, purely upon legal principles. It is not unrealistic to assume, however, that the testimony of the social scientists served to emphasize the harmful effects of segregation. "Therefore, if the testimony played any role it was a 'legislating' one, in the change from one rule of law to another."[58]

Before concluding the discussion on Brown, I ought to review Professor Edmond Cahn's position. He feels that an unfortunate perception exists that the Brown decision depended on the testimony of the social scientists. Rather, he believes that their testimony was unnecessary, since for a long period the cruelties associated with segregation had been well established and understood.[59] According to Cahn, Footnote Eleven of the Courts' opinion provided the social science expert witnesses with a sort of consolation prize. In fact, Cahn's major concern centers on whether social science itself has suffered because of its use in litigation. "At present," he says, "it is still possible for the social psychologist to 'hoodwink a judge who is not over wise' without intending to do so; but successes of this kind are too costly for science to desire them."[60]

> True, the Constitution should not be wedded to any social science any more than to a school of economics. On the other hand, Constitutional interpretation should consider all relevant knowledge. The Constitution turned on a moral judgment; but moral judgments are generated by awareness of facts.[61]

---

[57] Brown v. Board of Education, 347 U.S. 483, 494-95 n. 11 (1954).

[58] Jack Greenberg, "Social Scientists Take the Stand: A Review and Appraisal of Their Testimony in Litigation," Michigan Law Review. 54, May 1956, p. 965.

[59] Edmond Cahn, "Jurisprudence," New York University Law Review. 30, 1956, p. 150.

[60] Id. at 166.

[61] Greenberg, supra note 58, at 969.

The Judicial Impact of Social Science Research Since Brown

It was in Stell v. Savannah-Chatham County Board of Education[62] that parents of white children intervened. They argued that social science research supported the view that black children from low socio-economic families would find it educationally harmful to be placed in competition with white children. The court, in dismissing the complaint left open to any of the parties the right to reopen the case if they could show that the school district failed to accord either white or black children, as the case may be, the same degree of specialized instructional consideration as is given to the other.[63]

Next in importance to the work done by the nation's leading social scientists for the school segregation cases in the early fifties came the work by Dr. James D. Coleman,[64] author of The Coleman Report. The concern as to how segregated school systems would be dismantled gave rise to the use of social science research in Swann v. Charlotte-Mecklenberg Board of Education.[65] It appears that the ideal racial mix of 30 percent black to 70 percent white[66] discussed in the decision of the Court in that case was influenced largely by the research of Dr. Thomas F. Pettigrew, a Harvard sociologist.

---

[62] 220 F. Supp. 667 (S.D. Ga. 1963), rev'd 333 F. 2d. 55 (5th Cir. 1963), cert. denied, 379 U.S. 933 (1964).

[63] Id. at 685.

[64] 402 U.S. 1. (1971).

[65] Id.

[66] 429 F. 2d. at 821 n. 1. (1970).

In Bradley v. School Board of City of Richmond[67] the inevitable finally occurred: The Court found itself having to render an opinion on the constitutionality of a remedy requiring the consolidation of several contiguous school districts into a metropolitan "super district." Here the Fourth Circuit Court of Appeals permitted data on housing discrimination to be submitted as evidence.

In Keys v. School District No. 1,[68] a Denver case, the complex problem of desegregating a tri-ethnic population emerged. Many well-known social scientists like David Armor, Barbara Sizemore and Roy Innis testified in Keys. Some on behalf of the special needs of Chicano students which were distinct from the needs of other student.

And in the Milliken v. Bradley[69] case a particularly interesting twist occurred. Judge Roth "permitted. . .suburban school boards to take the deposition of Dr. David Armor who earlier had written, based on his studies of various bussing 'experiences,' that bussing is not an effective policy instrument for raising the achievement of black students or for increasing interracial harmony."[70] Later, the deposition from Armor was to be rejected on the grounds of irrelevancy.

[67] 338 F. Supp. 67 (E.D. Va.) rev'd, 462 F. 2d 1058 (4th Cir. 1972), aff'd by an equally divided court, 412 U.S. 92 (1973).

[68] 313 F. Supp. 61, 64-69 (D. Colo. 1970), aff'd in part and rev'd in part, 445 F. 2d 990 (10th Cir. 1971), modified and remanded, 413 U.S. 189 (1973).

[69] 418 U.S. 717 (1974).

[70] John Minor Wisdom, "Random Remarks on the Role of Social Sciences in the Judicial Decision-Making Process in School Desegregation Cases," Law and Contemporary Problems, 39, Winter 1975, p. 144.

A pediatrician testified in Thompson v. School Board[71] as to the potentially harmful physical and psychological effects lengthy bussing would have on first and second grade students.[72] The United States district court, in Hart v. Community School Board,[73] cited Mosteller and Moynihan's reexamination of the Coleman Report findings as support for their argument that "self-imposed segregation in the public schools is desirable and therefore constitutional."[74] In Brunson v. Board of Trustees[75] Judges Craven and Sobeloff differed on the importance of such testimony as that offered by Professor Thomas Pettigrew. According to Judge Craven:

> The federal courts, when plunged into sociology and educational theory, are into something they know very little about. Dr. Thomas F. Pettigrew of Harvard University, who has a respectable social-psychology pedigree and who is a recognized expert in school integration, testified at great length about integration and desegregation in Brewer v. Norfolk City School Board. . . .
>
> Dr. Pettigrew. . . .testified that "there does seem to be some optimum level for the achievement of both white and black children that drops after 35 or 40 [percent black students in the school is surpassed]." Dr. Pettigrew has concluded that little advantage is gained for children of either race, and some harm may result, from placing children in a school where they are in a distinct racial minority. . . .[76]

On the other hand, Judge Sobeloff rejected the use of Professor Pettigrew's findings.

To be sure, social science research applied to education has not been limited to school desegregation cases. It is now frequently cited in cases

---

[71] 498 F. 2d. 195 (4th Cir. 1974).

[72] 363 F. Supp. at 460.

[73] 383 F. Supp. at 699, 742 (E.D.N.Y. 1974).

[74] Id. at 742.

[75] 429 F. 2d. 820 (4th Cir. 1970).

[76] Id. at 821.

concerning grouping and tracking,[77] bilingual education,[78] testing,[79] and student discipline.[80]

In San Antonio Independent School District v. Rodriquez[81] and Robinson v. Cahill[82] cases concerning the financing of public schools, social science data was presented. Social science data entered the courts deliberations. . .in attempting to determine what 'thorough and efficient' meant in relations to schools."[83]

Findings, Testimony and the Future Role of the Social Scientist

"Lawyers in greater numbers are undoubtedly going to use social scientists where they feel their testimony can help."[84]

Thus, the judge must have a procedure by which the research presented can be reviewed for its validity and reliability. The reasoning here is that many officials in the legal profession are, as Judge Craven acknowledged, ignorant of sociology and educational theory.[85] Therefore, unless

[77] Singleton v. Anson County Board of Education, Civil No. 2259 (W.D.N.C., July 3, 1967).

[78] Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), aff'd sub. nom. Smuck v. Hobson, 408 F. 2d. 175 (D.C. Cir. 1969), Lars v. Nichols, 414 U.S. 563 (1974).

[79] Larry P. v. Riles, 343 F. Supp. 1306 (N.D.Cal. 1972).

[80] Hawkins v. Coleman, 376 F. Supp. 1330 (N.D. Texas 1974); Goss v. Lopez, 419 U.S. 565 (1975).

[81] 411 U.S. 1. (1973).

[82] 303 A. 2d. 273 (1973).

[83] Patricia E. Stivers. "Social Science Data and the Courts," Educational Researcher. 5, May 1976, p. 12.

[84] Greenberg, supra note 58, at 970.

[85] J. Braxton Craven, Jr. "The Impact of Social Science Evidence on the Judge: A Personal Comment," Law and Contemporary Problems. 39, Winter 1975, p. 154.

these officials obtain expertise themselves or hire someone competent to interpret research findings presented as evidence, they will become captives of their own ignorance. On the other hand, the social scientist has to avoid the desire, however subconcious, to prove his case and to show the kinds of evidence he believes and wants to believe exist.[86]

The limitations of social science research are well recognized in the academic community. Social scientists examining and interpreting the findings of a given piece of research must acknowledge their limitations when they leave the academic arena, and particularly when they enter a courtroom where they must respond to a variety of hypothetical questions, the answers to which may be acted upon pragmatically.

Conclusion

"What seemed at first to be antagonism between social science and law has now developed into a love match."[87] What began in fields outside of education is now an integral part of the domain in which educators must function. But, if anything has been learned from those initial skirmishes between those relying upon principles of law as extracted from the Constitution and the social scientists who believed their respective disciplines could provide a new and needed dimension to the legal profession, it is that lawyers and social scientists alike can play valuable roles in the policy-making process.

In Briggs, Justice Frankfurter expressed the view that social scientists could help the courts in formulating rules of law when he said:

[86] Jay Hartley Newman. "The Right to Independent Testing: A New Hitch in the Preservation of Evidence Doctrine," Columbia Law Review. 75, November 1975, pp. 1367-69.

[87] Wisdom, supra note 70, at 142.

> Can we not take judicial notice of writing by people who competently deal with these problems? Can I not take judicial notice of Myrdal's book without having him called as a witness?. . .How to inform the judicial mind, as you know, is one of the most complicated problems. It is better to have witnesses, but I did not know that we could not read the works of competent writers.[88]

While social science can and should provide a means to the goal of a just society, social scientists should in no way direct the operation of the courts, any more than a judge should feel at ease when interpreting the findings from a complex study submitted as evidence. This word of caution is offered particularly to those who eagerly await the day when "social scientists can advise not only courts, but the people generally; just as physicians, chemists and other physical scientists do today."[89]

As the debate on what role social scientists should play in policy making continues, we have reason to believe that the Courts will be confronted more and more with evaluating the worth of objective and subjective data submitted as evidence. This will be especially true in civil liberties cases. Judges should continue to keep in mind the fact that:

> Courts may act on social fact and not social fiction, they should seek from the social scientists coherent collections of findings, and scientific evaluation of the strength and significance of these findings for the particular legal problem faced. Lawyers, not scientists, must determine what is relevant in litigation; but scientists, not lawyers, should determine what of the relevant is reliably known.[90]

---

[88] Statement by Judge Frankfurter in Briggs v. Elliott, during the first reargument of the school segregation cases, cited in Greenberg, supra note 58, at 966.

[89] Parmelee v. United States, 113 F. 2d. 729, 737 (D.C. Cir. 1940)

[90] Kohn, supra note 21, at 165.