THE PENNSYLVANIA STATE UNIVERSITY
SCHREYER HONORS COLLEGE

DEPARTMENT OF HISTORY

ANALYZING "DETRIMENTAL PSYCHOLOGICAL HARM": SOCIAL SCIENCE EVIDENCE AND SEGREGATION IN THE SUPREME COURT POST-1950

SARAH A. MCKENNA
SPRING 2019

A thesis
submitted in partial fulfillment
of the requirements
for baccalaureate degrees
in History and Political Science
with honors in History

Reviewed and approved* by the following:

Michael Milligan
Teaching Professor of History
Thesis Supervisor

Cathleen Cahill
Associate Professor of History
Honors Adviser

* Signatures are on file in the Schreyer Honors College.

ABSTRACT

During several school desegregation cases heard in the Supreme Court since 1950, social science research was utilized as critical evidence in a number of amicus briefs. However, the nature and focus of this research continuously fluctuated largely due to the absence of a concrete definition of social science. In *McLaurin v. Oklahoma State Regents* (1950), the Supreme Court ruled to desegregate Jim Crow practices in graduate education using subtle references to the detrimental psychological harms brought on by segregation, yet the supporting literature was not directly cited. A changing tide occurred in *Brown v. Board of Education* (1954) when the Supreme Court emphasized the detrimental psychological harms in its ruling that state-mandated segregation in public schools was unconstitutional. Following *Brown*, there was a critical shift in social science research interest. The field shifted from emphasizing the psychological harms of segregation to highlighting the educational benefits of desegregation. This shift was reflected in the segregation cases and social science research that fell under consideration in the Supreme Court once again in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007). But this time, the Majority Opinion was unconvinced by the social science evidence. This thesis seeks to discover the influence social science evidence had in each of these cases by closely studying several critical amicus briefs, how a number of the Justices interpreted and responded to such research, and the criticisms directed at social science evidence that arose following the decisions. Along with chronicling the progression of social science research on school diversity and desegregation, this thesis also analyzes how relevant social science was to each case and why it was employed to advance the cause of desegregation.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

This thesis was easily one of my greatest accomplishments of my undergraduate career. From being the high school senior relieved to not have to write an Honors Thesis to dedicating the last year and a half to such a project, I could have never imagined the outcomes. A special thanks to Professor Michael Milligan for working with me on my thesis for its entirety; your countless revisions and advice truly made this process manageable and enjoyable. To Eric Novotny, thank you for your expertise in finding digitized briefs and sources. To Dr. Cathleen Cahill, thank you for acting as my honors advisor and providing your insights.

There are also several people I would like to thank for not only their time, but for their impact on me at Penn State. Without them, the last four years would not have been possible:

To Professor Jack Selzer and Professor Tatiana Seijas, for helping me realize my capabilities of being a Paterno Fellow, a Schreyer Scholar, and pushing me to believe in myself.

To Heather Baruch-Bueter and the Liberal Arts Envoys, for encouraging me to grow as a leader in the College of the Liberal Arts and reminding me why this College is so special.

To my family, from the highs and lows of everything, you were always right by my side. I will forever be indebted to your love, support, and encouragement.

To Penn State Club Swimming and Club Swimming Benefitting THON, you inspire me every day to be the best person I can be and to never give up on my goals. Thank you all for your friendship and devotion.

Finally, to Sproul Squad – Maria Fleck, Hannah Petruzzi, Jourdan Mitchell, Lindsay Buono, and Emily Do – you all made the last four years some of the best yet. I couldn't have gone through any of this without you all. We did it.

Introduction

Throughout United States history, African Americans struggled to achieve the same rights as their white counterparts. Even after the Reconstruction Era and the passage of three constitutional Amendments intended ensure racial equality, most aspects of society continued to be separated by race, and segregation to become deeply rooted in United States culture. By the twentieth century, the National Association for the Advancement of Colored People (NAACP) and the Supreme Court began to consider the effects of segregation on the United States, specifically when it came to education. By starting with the education system – ranging in all levels from elementary school to graduate school – the NAACP came up with a plan to end segregation in every area of the United States. In order to accomplish this, some sort of evidence was needed to persuade the Supreme Court to end segregation. By the 1950s, that evidence would become social science research.

Before exploring the social science research presented in school desegregation cases, some background information regarding segregation and the Supreme Court before 1950 needs to be addressed. Prior to any Supreme Court case arguing for or against racial segregation, many states, principally Southern states, passed racial segregation laws – known as Jim Crow Laws – that separated blacks and whites in everyday life. In 1892, Homer Plessy, an African American man, decided to test the Jim Crow Laws. While traveling by train from New Orleans to Covington, Louisiana, Plessy purposely sat in a white-only train car, despite the train having a reserved car for African American passengers. Upon refusing to move to the black-only car, Plessy was arrested for violating Louisiana's Jim Crow Laws. As the case worked its way up to the Supreme Court, Plessy's lawyers argued that Jim Crow and the concept of *separate but equal*

violated the Equal Protection Clause under the Fourteenth Amendment. As a citizen of the United States, Plessy's lawyers argued that he had the same access to facilities and protection of his rights as his white counterparts. By enforcing laws that hindered these rights, states were creating barriers for a significant portion of the population based on race. These arguments carried *Plessy v. Ferguson* through the appeals process until 1896, when the case was argued in front of the Supreme Court.[1]

In a 7-1 decision, the Supreme Court determined that segregation was legal in *Plessy v. Ferguson,* as long as the separate facilities were equal in quality and services. In the Majority Opinion, Justice Henry Billings Brown wrote that the Fourteenth Amendment was written with the intention to create equality between blacks and whites, but in practice, there was no way that the Amendment intended to "'abolish distinctions based upon color.'"[2] The *Plessy* decision and establishment of the legal notion of *separate but equal* was extremely consequential, as this ruling gave constitutional support to the wide network of racially-separate public facilities (railroad cars, schools, stores, recreation centers, and so forth) that covered the nation's Southern states. As long as African Americans had access to a facility that was assumed "equal" to the white facility, segregation could be enforced.

Justice John Marshall Harlan authored the lone dissent in *Plessy*. Harlan viewed segregation as harmful to African Americans and believed that it violated the Constitution by establishing whites as the dominant class of citizens over blacks. Essentially, Jim Crow Laws labeled blacks as inferior. Harlan famously claimed the Constitution as "color-blind" and did not permit any forms of class superiority. He also believed that blacks and whites depended on each

[1] Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 2004), 72-3.
[2] Paul Rosen, *The Supreme Court and Social Science* (Urbana: University of Illinois Press, 1972), 120.; Kluger, 73.

other in order to advance United States society and culture. With segregation, Harlan worried how "the seeds of race hate" would hinder this relationship.[3] Harlan was also concerned about the consequences of legal segregation and saw the Majority Opinion in *Plessy* as enabling and justifying the expansion of future segregation between other racial, social, and religious groups.[4]

Following *Plessy,* a handful of Supreme Court rulings dealing with racially-mandated segregation re-affirmed the precedent. In the 1899 *Cumming v. Richmond County Board of Education* ruling, the Court favored a school district that did not provide a new public high school for their black students when the original building was turned into an elementary school for black children. When the School District refused to provide another public high school for the black students and they were prohibited from attending the local white-only high school, the students were denied access to public education. Nine years later, in *Berea College v. Commonwealth of Kentucky,* the Court ruled that any contact between black and white students "could be outlawed by the state," regardless if integration was voluntary or unintentional.[5] With these two cases upholding *Plessy* and *separate but equal*, segregated schools looked to be firmly engrained in early twentieth century United States society.

By the 1930s, the NAACP focused litigation efforts in several specific areas of the United States public education system. To start, Thurgood Marshall, a lawyer for the NAACP and a future Supreme Court Justice, led a series of lawsuits aiming to equalize salaries between black and white public-school teachers. Significantly, Marshall was successful in these cases. Spanning for nearly fifteen years, several court rulings compelled Jim Crow-operated school boards to equalize pay. The NAACP's insistence on ensuring genuine "equality" under *separate*

[3] Kluger, 80-2.
[4] Ibid.
[5] Ibid., 82, 86-7.

but equal was, however, only the first step in its long-term strategy of achieving desegregation throughout the public education system. By the end of World War II, adhering to equal salaries started to become costly for segregated schools to maintain and these cases began to decline in frequency.[6]

At the conclusion of the equal salary cases, Marshall and other NAACP lawyers moved towards desegregating universities, specifically focusing on graduate schools. Like the teacher salary cases, the graduate school cases saw some notable transition towards equality that paved the way for the upcoming school desegregation cases in the 1950s. In the 1938 case *State of Missouri ex rel. Gaines v. Canada*, the Court ruled (partially) in favor of Lloyd Gaines, a black student with aspirations to attend law school, in his home state, at the white-only University of Missouri Law School. Because the State of Missouri did not have a separate law school for black students, the Court ruled that Gaines's Fourteenth Amendment Equal Protection rights were violated. The Court offered the State of Missouri two options: admit Gaines to the University of Missouri Law School or form a separate state law school for African American students and admit Gaines. The State chose the latter option and opened a black-only law school, at Lincoln University, the following year.[7] Although *Gaines* did not integrate the State's white law school, the ruling marked an advance in acknowledging the need for equal educational facilities and creating a fair education system in the era of Jim Crow.

Ten years later, in 1948, the *Gaines* decision was used as precedent in *Sipuel v. Board of Regents of University of Oklahoma*. Similar to Lloyd Gaines's situation, Ada Lois Sipuel was denied admission into the white-only University of Oklahoma Law School on the basis of race.

---

[6] Mark Tushnet, *Making Civil Rights Law* (New York: Oxford University Press, 1994): 116-7.
[7] Ibid., 121-2.

After her case was denied from both the trial court and the State Supreme Court, Marshall took *Sipuel* to the Supreme Court where, in a rather brief Opinion, Chief Justice Fred Vinson expanded the *Gaines* ruling. Vinson deemed that the state of Oklahoma needed to provide Sipuel with access to a legal education within her home-state, either by admitting her to the University of Oklahoma or by creating a separate law school for African American students that she may be admitted to. Just five days after Vinson's decision was handed down, *Sipuel* returned to the Oklahoma State Supreme Court. The State Supreme Court concluded that with Vinson's reference to *Gaines*, the University only needed to create a separate law school, in a timely manner, in order to continue implementing state-mandated segregation. Two days later, the new, black-only law school was opened in three rooms of the State Capitol Building and operated by three white attorneys.

Thurgood Marshall was discouraged with the new law school, as he did not believe that it was equal to that of the resources and quality of the University of Oklahoma Law School. When he petitioned to the Supreme Court that the new law school violated *separate but equal*, the Court denied to hear Sipuel's case again, claiming that they "had not yet interred separate but equal."[8] With the *Sipuel* ruling, Marshall and the NAACP gained momentum to attack segregation throughout the United States public education system.

Even with the success in graduate school desegregation achieved by the late 1940s, Marshall and his colleagues at the NAACP wanted to try a new strategy to display the wrongs of segregation: social science. As a relatively new and underdeveloped field of academic research

[8] Ibid., 129-30.; Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004): 205-6.

in the mid-twentieth century, American social science lacked a concrete definition for Marshall to work with.

Although challenging to find a proper definition of social science in the mid-twentieth century, a noteworthy article in the 1940 issue of *Science* – entitled "What is Social Science?" – attempted to illustrate the absence of a clear, concrete definition and guidelines. According to Professor Edwin B. Wilson, one definition of social science was a "science…that relates to the social condition, the relations…which are involved in man's existence and his well-being as a member of an organized community."[9] Under this meaning, social science includes topics like crime and education. Another definition Wilson cited claimed that social science encompasses "economics…political science…social psychology, and cultural anthropology" while excluding law and education.[10] Finally, a third definition Wilson mentions simply defines social science as an interaction between more than one person.[11] Since social science captured an array of meanings, and without a uniform definition, many were unsure of how to interpret and properly use social science.

Throughout the desegregation cases, stretching from the 1950s and beyond, there was no agreed-upon definition for social scientists, lawyers, or Justices to follow. This missing definition was beneficial for these parties, as each had the ability to mold social science to fit various interpretations, arguments, and research interests regarding desegregation. Notably, as social science research evolved, the central focus and approach taken by research experts changed over time. In the early desegregation cases, social scientists examined the psychological

[9] Edwin B. Wilson, "What is Social Science?," *Science* 92.2382 (1940): 158, *JSTOR*, Online (accessed on 9 October 2018).
[10] Ibid.
[11] Ibid.

harms supposedly brought on by racial segregation, including the development of a caste system and the resulting feelings of inferiority among the black community. But starting in the 1970s and into the twenty-first century, social scientists functionally abandoned the psychological harm argument and concentrated on the broader educational benefits of desegregation. With this fluidity in definition, social science research was capable of developing new trends and taking on new meanings as the desegregation battle continued.

In conjunction with the benefits, several challenges and questions were raised with this increased use and referencing of social science research. For one, without a concrete definition, it was unclear how social science evidence could work in conjunction with the law – and even more so with conventional legal and constitutional reasoning. Although social science evidence had been presented to the Supreme Court before the 1950s, many of the Justices and lawyers were unsure how to consistently interpret the evidence. In the first half of the twentieth century, many considered law and social science two separate spheres, the former being the "practical art" and the latter acting as the "theoretical pursuit."[12]

The questions regarding the appropriate methods by which Justices and lawyers utilized social science also brought on parallel questions about the appropriate role of social scientists. While some academics favoring the dismantling of Jim Crow Laws called for social scientists to become social engineers – to use their research to become social advocates for change – others believed that this violated their training as expert social scientists. Without a proper definition of social science, many questioned how to interpret the evidence and the role of the social scientist well into the twenty-first century.

[12] Rosen, 116.

Finally, with a shift in research focus from psychological harm to educational benefits, the Justices of the Supreme Court seemed less convinced by social science evidence in the early twenty-first century. By this time, the Justices had been well-exposed to sociological jurisprudence and developed their own views and interpretations of social science: some agreed with the educational benefits while others found it inconclusive. Even with the growth in support from the social science community and third parties writing amicus briefs, the members of the Supreme Court moved away from the uniform interpretation of social science evidence they had established in the 1950s.

Despite the conflicts with social science – and the presumptions of some scholars that the social science evidence was insufficient in the desegregation cases – the presented evidence greatly impacted the Supreme Court and the school desegregation cases. When traditional routes of jurisprudence – precedent, original intent, and textual analysis – failed to provide a clear answer to the constitutionality of segregation, social science evidence filled the void. The under-formed definition provided malleable arguments, unique interpretations, and evolving research interests, all of which could be considered by the Court in the broader catch-all realm of sociological jurisprudence. As explained by scholar Roscoe Pound, sociological jurisprudence covered a number of areas that other jurisprudences could not. He claimed that "sociological jurisprudence…was able to attract jurists of diverse philosophical persuasions who might disagree on the general principles of law but would happily agree on the methods for solving concrete problems."[13] With social science evidence in the Supreme Court, the Justices gained an additional route of jurisprudence to use to implement desegregation.

[13] Ibid., 42.

This thesis will examine three school desegregation cases that were argued in the Supreme Court: *McLaurin v. Oklahoma State Regents* (1950), *Brown v. Board of Education* (1954), and *Parents Involved in Community Schools v. Seattle School District No. 1* (2007). These three cases were selected for several reasons. First, each case represents different educational institutions in varying decades. *McLaurin* focused on graduate education in the 1940s and 1950s, *Brown* focused on public primary schools in the 1950s, and *Parents Involved* focused on public school choice and school assignment plans leading up to the twenty-first century. Second, each case provides a unique perspective of social science evidence that proved critical to their respective decisions. *McLaurin* kickstarted the social science presentations, yet the Opinion briefly referenced the submitted literature without formal citations, while *Brown* was deemed the first Supreme Court case to officially cite the evidence and acknowledge the psychological harm of segregation. However, the Justices were split on the use and interpretation of social science in *Parents Involved*, and the Majority Opinion chose to not uphold the race-based school assignment policies.

Third, the arguments the social science evidence provided in each case shows the progression of interpretations and sociological jurisprudence over fifty-seven years. Using the psychological harm argument in several amicus briefs, social scientists and the NAACP in both *McLaurin* and *Brown* aimed to prove that segregated education was inherently harmful to children. By the time *Parents Involved* reached the Court, social science shifted to examining the educational benefits of desegregation and implementing the findings in educational policy. Based on a comparative look of the relevant Opinions, it is plausible to conclude that the late Vinson and Warren Courts of the 1950s found the psychological harm argument more convincing than the 2007 Roberts Court found the educational benefits argument.

Finally, this thesis offers an alternate lens on the influence of social science evidence regarding segregation. Previously, a number of scholars declared the use of social science, particularly in *Brown v. Board of Education*, confusing and insignificant. As the Supreme Court acknowledged social psychological studies only in a single footnote in *Brown*, scholars such as Daryl Michael Scott stated that the Justices were unpersuaded by social science and the evidence created perplexities for all involved. Additionally, some members of the social science community, including researchers Janet Schofield and Leslie Hausmann, claimed, in recent times, that the shift in research interests led to a decline in social science research examining segregation. This thesis offers an alternative view to both of these presumptions: social science research was influential, and beneficial, to the Justices since 1950 and it continued to be relevant as the Supreme Court entered the twenty-first century. Social science evidence provided the Supreme Court, lawyers, and social scientists a chance to re-shape the field and desegregate the nation.

Chapter 1

The Introduction of Psychological Harm: *McLaurin v. Oklahoma State Regents* (1950)

In the 1950s, Thurgood Marshall and the NAACP moved into a new area of desegregation cases: graduate schools. After several years of successfully equalizing teacher salaries in segregated school districts, the next move was to directly attack Jim Crow Laws in the education system. Since the decision to further implement *separate but equal* law schools in *Missouri ex rel. Gaines v. Canada* (1938), public universities started to create separate facilities (of equal quality) for African Americans to obtain higher education without having to integrate. By the early 1950s, many deemed these "equal" facilities unequal in quality, resources, and ability to provide a top-notch education. At this time, the NAACP demanded that all-white institutions admit their black applicants. As explained by Mark Tushnet in his book *Making Civil Rights Law*, Marshall's ultimate goal during this time was to directly "try the question of equality…to construct a record that provided a good basis for evaluating the NAACP's claims that separate facilities could never be equal."[14]

As well, the early 1950s graduate school cases provided the first chance to test out the social science writings as evidence on school desegregation in the United States Supreme Court. On June 5, 1950, the Court announced its decision to desegregate two southern institutions of higher education in *Sweatt v. Painter* (1950) and *McLaurin v. Oklahoma State Regents* (1950). Both of these cases – the former which desegregated a Texas law school and the latter which ended segregation within an Oklahoma graduate school – provided a chance for non-traditional

[14] Mark Tushnet, *Making Civil Rights Law* (New York: Oxford University Press, 1994): 131-2.

evidence, such as social science, to be presented to the Supreme Court, particularly in *McLaurin.* But in the unanimous *McLaurin* Opinion, the brief references of social science evidence only encompassed a short paragraph near the end of the Opinion and did not formally cite any social science studies or briefs. Even with the lack of formal citations, Chief Justice Fred Vinson acknowledged that segregating McLaurin from his peers "handicapped…his pursuit of effective graduate instruction."[15] With limitations in his studies, McLaurin was "impair[ed] and inhibit[ed]…to learn his profession."[16]

When analyzing the *McLaurin* Opinion, there is a critical factor that may explain the peculiar recognition of social science: the Justices on the Supreme Court did not know how to properly interpret the non-traditional evidence in conjunction with traditional forms of jurisprudence. Specifically, the field of social science was not abundantly taught in law schools, nor were instances of sociological jurisprudence used regularly prior to 1950. Without the proper training and few precedents to reference, it was unclear how the Justices should incorporate such non-traditional evidence. In addition to determining the insufficiencies of *separate but equal* under *McLaurin*, the Vinson Court set the precedent of recognizing and effectively interpreting social science evidence concerning public school education.

Despite the lack of expertise amongst the Court, the several references to the psychological terms of "harm" and "impairment" made in the *McLaurin* Opinion relate back to the missing, under-formed definition of social science and the efforts of liberal social scientists to prove that the practice of segregation was wrong. The missing definition offered a number of opportunities for social science and sociological jurisprudence, such as providing a flexible,

[15] Chief Justice Fred Vinson, Opinion of the Court, McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950), Cornell Law School, Online (accessed on 18 March 2018).
[16] Ibid.

adaptable argument. When precedent, textual analysis, and original intent failed to provide answers, the NAACP and its social scientist allies hoped that the Justices could resort to non-traditional legal evidence. Additionally, social science did not provide strict research methods for researchers to follow. Revealing of this flexibility were the social science writings that influenced several of the NAACP and *McLaurin* amicus briefs. Such writings relied on sociological observations and literature, ranging from reflections on United States culture and the expansion of American democracy to citing fiction novels. Each social science study intended to display the psychological, physical, and economic harms of segregation, with the ultimate goal to end the practice altogether.

In addition to questions about the material and the validity of social scientific research, an interrelated question – one that concerned both the Justices and the social science community – emerged: what was the appropriate role of the social scientist during the litigation process? In other words, should social scientists rely on their expertise and training in the field or should they act more as legal experts by applying their research findings to formulate social change? These questions were vital to *McLaurin* and, even more evidently, as we move forward to the famous *Brown v. Board of Education* (1954) case and ruling.

In the end, even with its lack of outright acknowledgement, the Court was nevertheless influenced by elements of contemporary social scientific research and writings. In this important regard, the social science research, although relatively indirect, in *McLaurin v. Oklahoma State Regents* provided a pathway towards the recognition of it in *Brown v. Board of Education.*

A considerable portion of this chapter will be devoted to closely examining and analyzing two non-traditional legal sources that helped formulate the NAACP's psychological harm argument: Gunnar Myrdal's massive two volume 1944 study, *An American Dilemma,* and Helen

V. McLean's 1946 article, "Psychodynamic Factors in Racial Relations." As some of the earliest social science studies to argue that segregation led to psychological harm for all involved – including the white population – Myrdal and McLean relied on various pieces of literature and sociological observations made about United States society to depict the negative implication of segregation. As a critical component, in *An American Dilemma*, Myrdal requested for American social scientists to apply their research findings and become activists for social change as part of the litigation process. This chapter will also examine two compatible amicus briefs submitted in support of the black plaintiffs in these 1950 graduate education cases: "The Brief for the Committee of Law Teachers Against Segregation in Legal Education" (1950 for *Sweatt*) and the "Brief of American Veterans Committee Inc. (AVC)" (1949 for *McLaurin*) and their mentions of social science literature. To conclude, the text of the unanimous *McLaurin* Opinion will be presented to illustrate the references of social science's psychological harm argument in 1950.

Background of the Case

McLaurin was not the first case to bring the University of Oklahoma to the Supreme Court. Following the Supreme Court's decision in *Sipuel v. Board of Regents of University of Oklahoma* in 1948, the University of Oklahoma established a separate law school for its African American students. Although the University now provided a public legal education to black students, Thurgood Marshall did not believe this education was equal to the white-only school. Right around the time that the new law school was created, in late-January 1948, six African Americans applied for various graduate programs at the University of Oklahoma, including George McLaurin. McLaurin, a sixty-eight-year-old man, already held a Master's degree in

education and was seeking his doctorate in the same field from the University. Once the applications were received, the University decided that it would not create separate programs for these black applicants like they did for Sipuel. Under the state's Jim Crow Laws, each applicant, including McLaurin, was denied admission from the University of Oklahoma on the basis of race. When McLaurin sued the University, a District Court handed it orders to admit McLaurin due to the lack of a separate doctoral program for African American students in the state and the University's refusal to create such a program.[17]

Once the 1948-49 academic year began, McLaurin found himself segregated from the rest of his peers in every area of the university: the library, the cafeteria, and even in the classroom. In order to separate McLaurin from the rest of the students, the University of Oklahoma set up isolated tables and lunch hours in the cafeteria, created make-shift study places, and roped off desks with signs indicating "'Reserved for Colored.'"[18] A number of McLaurin's white peers did not agree with the University's treatment of their classmate. In response to the forced segregation, white students ripped down the roped off desks and gave McLaurin access to the main areas of the library. Although there were slight improvements in McLaurin's treatment by the time the Supreme Court heard the case in 1950, these retaliations by white students were not enough; McLaurin still could not study in the same spots as his white peers and his roped off desk turned into a roped off row of desks for him and other black students.[19]

Why did the University of Oklahoma feel the need to continue McLaurin's segregation, even when he was a student? In a way, the University may have been trying to send a message to

[17] Tushnet, 129-30.
[18] Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 2004): 267.
[19] Ibid.

other potential black students. As an applicant, McLaurin met every criterion to be admitted to the graduate school – except for the state-mandated racial barriers. By refusing to create a separate graduate school for McLaurin and other black students, the University of Oklahoma was denying McLaurin an education at a public university in his home-state; this, the District Court declared, was a violation of McLaurin's rights as a citizen of the state of Oklahoma. Now that he was a student at the formerly-white only institution, the University determined that by simply providing McLaurin with the same amenities as his white peers, including classes and professors, he was receiving an equal education. Under Oklahoma's Jim Crow Laws, as long as McLaurin was given access to the same amenities as his classmates, then he could continue to be segregated within the walls of the institution.[20]

The NAACP did not agree with the University of Oklahoma's segregation practices. Because McLaurin was segregated within a supposedly integrated institution, Marshall believed that he was receiving an inferior education, regardless if he was in the same classroom as white students. Coupled with *Sweatt v. Painter*, Marshall structured his argument around the ineffectiveness of *separate but equal*: any form of segregated graduate (or legal) education "could never be equal."[21] By emphasizing the lack of resources McLaurin had access to, Marshall looked to show that the accommodations made by the school hindered McLaurin's ability to learn and study at the University, as he felt rejected, humiliated, and inferior to his peers, all because of his race. In the end, the University of Oklahoma did not provide McLaurin an equal education, therefore violating *separate but equal* and the Fourteenth Amendment's Equal Protection Clause.[22]

---

[20] Ibid.
[21] Tushnet, 132.
[22] Ibid., 133.; Kluger, 267.

Sweatt v. Painter

McLaurin was not the only decision to reverse school segregation announced by the Supreme Court on June 5, 1950. The Court's ruling in *Sweatt v. Painter* was also announced the same day. Like *McLaurin, Sweatt* dealt with segregation at the graduate school level; this time, the case looked at the University of Texas Law School at Austin. In 1945, African American mail carrier Bill Sweatt decided to apply to law school at the University of Texas as part of a '"test case' to 'determine the future course of litigation'" regarding school segregation.[23] As an activist within the Houston branch of the NAACP, Sweatt knew that his application would be rejected on the basis of race. As the NAACP transitioned towards desegregating graduate schools, Sweatt was happy to assist with the changeover as one of the first plaintiffs. With Sweatt on board, the NAACP began to work towards Marshall's goal to persuade the Court that "separate facilities could never be equal."[24]

Like the University of Missouri in *Gaines*, the state of Texas passed legislation to create a separate law school for African American students known as the Texas State University for Negroes in Houston on March 3, 1947. In order for the school to admit students in a timely manner, a make-shift law school was housed in the basement of an office building in Austin during the construction of the Houston school. When the temporary school in Austin officially opened just seven days later, on March 10, 1947, opposition from the NAACP resulted in no student enrollment. This new law school suited the NAACP's transition to graduate school cases. Before the separate and "equal" law school was created, the NAACP could have referenced *Gaines* or *Sipuel* in order to admit Sweatt; the state needed to provide Sweatt a legal education

[23] Tushnet, 127.
[24] Ibid., 128, 132.

that he applied and met the admissions criteria for. But with a separate law school for African Americans, *Sweatt* changed its focus to *Plessy*: was the Texas State University for Negroes, even with the temporary location immediately available, truly equal to the University of Texas Law School?[25]

Marshall believed that the Texas State University for Negroes was not equal to the University of Texas Law School, mainly because the school lacked the resources that were critical to a quality law education. For example, in a brief written by the several law professors – that will be analyzed in the coming sections – one area that the new school lacked in, other than student enrollment, was staff and faculty. When the school first opened in Austin, three professors from the University of Texas were hired to teach courses. At the time, this made sense. If the new law school was a branch off of the white law school, then these students would at least have experienced, highly-qualified instructors from the same institution. However, once the law school was completed in Houston, it was assumed that a separate cohort of professors, who were not affiliated the University of Texas Law School, would be hired.[26] As a brand-new law school, it would be difficult to recruit experienced professors. More likely than not, the school would only be able to recruit newly trained professors with little teaching or law experience. The faculty situation alone would create an inferior education for the students at the Texas State University for Negroes. In order for the two schools to be considered *separate but equal*, they needed to provide access to the same resources.

---

[25] Ibid., 131.
[26] Ibid., 131-5.; Edward Hirsch Levi, et. al, "Segregation and the Equal Protection Clause: Brief for Committee of Law Teachers Against Segregation in Legal Education," 34.4 (March 1950): 290, *HeinOnline*, Online (accessed on 2 December 2018).

To Marshall, the separate school was not enough. With the continuing trend of creating separate schools for African Americans, he feared that *separate but equal* would be reinforced time and time again. In Marshall's mind, "the NAACP should never say to school boards that taking 'separate but equal' seriously was enough."[27] The low-quality education that students of African American-only schools would receive – including Sweatt – heightened the inequalities between blacks and whites. In order to create truly equal education, segregation could not exist.

As a comparable case to *McLaurin*, it is important to note that *Sweatt* also contained some use of non-traditional legal evidence. As both cases were decided at the same time and dealt with similar circumstances, it makes sense to address some of the key components of the *Sweatt* briefs, especially with references to social science literature and the psychological harm argument.

"Brief of the Committee of Law Teachers Against Segregation in Legal Education"

One such brief that satisfied this component of *Sweatt* was the "Brief for the Committee of Law Teachers Against Segregation in Legal Education." Written by several law professors and chiefly led by Thomas Emerson and John Frank of Yale Law School, the "Brief" was submitted as an amici curia favoring Sweatt in March 1950. The Committee of Law Teachers Against Segregation in Legal Education provided a number of explanations for how segregation was harmful to law schools, students, and the legal profession. Without the necessary resources, it would be difficult for students to prepare for a career in law. By mentioning these inequalities,

[27] Tushnet, 127.

the "Brief" addressed the importance of a high-quality education and how separate, inadequate education negatively affected the African American community.

What made the "Brief" slightly different from *McLaurin* was its use of both original intent and non-traditional social science concepts to explain why segregation was wrong. In the "Argument I" portion of the "Brief," the law professors addressed the original intent of the Equal Protection Clause under the Fourteenth Amendment, which they believed was to outlaw segregation. Additionally, the Fourteenth Amendment as framed was clearly meant to integrate blacks and former slaves into United States culture "by obliterating legal distinctions based on race."[28] Now with the passage of almost a century from Reconstruction to the *Sweatt* and *McLaurin* litigation, the professors claimed that such original intent could be applied to the education system, thereby reasoning that segregation and public education did not mix.[29]

Following the original intent argument, the professors moved to how current-day segregation harmed United States society and democracy in "Argument II" and "Argument III." This was where much of the social science evidence (based largely on sociology and education practices) was cited. Using social science as non-traditional legal evidence, the core argument of the "Brief" centered on two negative implications of segregation: the development of a caste system and establishing feelings of inferiority. As *separate but equal* continued to be enforced over the last half century, segregation morphed into a caste system, with whites being deemed superior and blacks being deemed inferior. Segregation throughout the twentieth century intended to keep this societal structure in place. As a result of their inferior status, blacks were always held to lower standards: their "educational, economic, and political development" were

[28] Levi, et al, 291-2.
[29] Ibid., 292.

greatly hindered and many did not have access to their basic civil liberties.[30] As a result, the psychological and sociological impacts brought on by segregation led to "maladjustment and tensions" between both blacks and whites in society.[31] The harms of segregation were thus noticeable; if a significant portion of the population experienced this type of treatment – and received a lower quality education – how would United States society look to the rest of the world? In the end, segregation was damaging and jeopardized United States society and democracy.[32]

In the concluding paragraphs of the "Brief," the professors asked the Court to consider how current segregation practices in the United States impacted the country's reputation to other nations around the world. With the end of World War II and the building intensity of the Cold War, the United States looked to form relationships with as many allies as possible against the Soviet Union. To accomplish this, images of United States culture were printed and distributed around the world. The professors shared a story told by General Bedell Smith, United States Ambassador to the USSR: Smith described two photographs, both printed by the American government, of a United States classroom that were dispersed throughout the Soviet Union. One of the photographs depicted an integrated classroom, signifying the United States as a nation interested in diversity and inclusion in public education. The purpose of such a photograph was to persuade other nations to become allies with the United States during the Cold War based on their integration efforts. But what the world did not know was that the photograph was not fully authentic and that few integrated classrooms actually existed in 1950 United States.[33] The need

[30] Ibid., 314-6.
[31] Ibid., 316.
[32] Ibid., 315.
[33] Ibid., 327-8.

for this altered photo exemplified the widespread belief that the continued practice of segregation would harm the United States in terms of Cold War international politics more than it would help.

In sum, the "Brief for the Committee of Law Teachers Against Segregation in Legal Education" aimed to show the psychological and social harms of segregation in *Sweatt*. In order to accomplish this, non-traditional evidence was presented in its "Brief" to the Court. Although traditional routes of jurisprudence, like original intent, may have worked to rule the segregation mandated at the University of Texas Law School unconstitutional, this argument was not definitive enough to claim that segregation was harmful to the United States society. As society continued to reinforce the notion of blacks as the inferior group through Jim Crow Laws, a poor education system that failed to support their future goals and deterred them from becoming equal to whites remained intact. By introducing non-traditional evidence, including social science, *Sweatt* presented the harms of segregation in a way that not only showed effects on African Americans, but on white Americans as well.

The "Brief of American Veterans Committee, Inc." (The "AVC Brief")

As one of the first school desegregation cases to feature social science evidence, *McLaurin* had the chance to set a precedent regarding the presentation of the evidence. Unlike *Brown v. Board of Education*, the briefs filed on behalf of McLaurin did not include a separate, distinctive "Social Science Statement" that compiled social scientific research explaining how segregation was wrong. But when examining the briefs, an amicus curia entitled the "Brief of

American Veterans Committee, Inc. (AVC)" (known as the "AVC Brief") is worth looking at closely, as it cited a number of social science studies.

Filed to the Supreme Court in October 1949, the thirteen-page "AVC Brief" utilized social science research and literature to explain the harms of segregation and, specifically, the humiliation that McLaurin experienced as a black student at the University of Oklahoma. Even though the "Brief" was relatively short in length, the specific social science studies, and their arguments for why segregation was harmful, made the "AVC Brief" significant. Within these thirteen pages of social science study citations, the American Veterans Committee took advantage of the missing social science definition to tailor compelling arguments that displayed segregation and the feelings of humiliation and the development of a sense of inferiority that hindered McLaurin's education.

Although they argued on behalf of McLaurin, the NAACP lawyers were not the authors of this particular brief. The American Veterans Committee (the AVC) wrote it. Formed in 1944 – just six years before *McLaurin* reached the Supreme Court – the AVC intended to gather World War II veterans and use their wartime experiences to implement "a political force for peace and reform" throughout the United States.[34] Based on the membership of the Topeka, Kansas chapter of the AVC, any veteran of any race was welcome to join, including African Americans. But what did the AVC have to do with desegregation and education? In its early years, the AVC's main focus was on creating a better life for veterans upon their return home from war, such as finding housing, obtaining jobs, and getting a college education under the G.I. Bill. Further, many members and leaders of the AVC were outspoken about topics concerning justice and

[34] Robert L. Tyler, "The American Veterans Committee: Out of a Hot War and Into the Cold," *American Quarterly* 18.3 (Autumn 1966): 420, *JSTOR*, Online (accessed on 30 October 2018).

reforms, ranging from the United Nations to fighting racism, specifically the kind evident in the wartime Japanese-American internment and the treatment of Japanese-American veterans post-World War II. Interestingly, after their founding, the AVC took more of a left-wing approach in politics, and some members were even sympathetic towards Communism.[35] Although it was initially formed as a way to assist veterans and protect their rights, the AVC's experience with college education and fighting for justice and reform for minorities is a plausible explanation for why the Committee became involved with *McLaurin.*

After an introduction of the case, the social science evidence began on page three of the "AVC Brief." The "Brief" outlined three main arguments of the psychological harms brought on by McLaurin's condition of segregation: how humiliated and inferior he felt, the negative impact the feelings had on his education, and the consequences of segregation on his white classmates. The "AVC Brief" claimed that McLaurin's treatment at the University intended to humiliate and ostracize him from his classmates. Being one of the few black students at the University of Oklahoma, it was assumed that McLaurin already stood out amongst his classmates. Even though he was in the same facility as whites, the University made McLaurin wear his "'badge of inferiority'" by physically separating him from fellow students in the cafeteria, library, and classroom.[36] As a result, McLaurin continuously felt the "humiliation, shame, frustration, resentment, and personal insecurity" that came with segregation.[37]

Once this sense of inferiority was rooted, the negative consequences of segregation started to emerge through McLaurin's education and his ability to learn in a number of ways.

---

[35] Ibid., 421-3.; Kluger, 391.
[36] Brief of American Veterans Committee, Inc. (AVC) Amicus Curiae, *McLaurin v. Oklahoma State Regents,* 339 U.S. 637 (filed 27 January 1950), *U.S. Supreme Court Records and Briefs, 1832-1978*, Online (accessed on 18 March 2018): 3, 6.
[37] Ibid., 4.

One example that the "AVC Brief" detailed was the position of McLaurin's desk in the classroom. According to the "Brief," the desk was positioned at "an obtuse angle of vision" in relation to the blackboard and front of the classroom.[38] In addition to the awkward angle, a pillar blocked a portion of McLaurin's view. Because of the angle and the position of the pillar, McLaurin's view of the classroom was partially interrupted and he could not see any of the students at the back of the room.

McLaurin's seating arrangement made news prior to the Supreme Court case: the "AVC Brief" cited two photographs – one in *Life* magazine and the second in *Time* magazine, both from Fall 1948 issues – that showed McLaurin sitting in a segregated corner of the classroom during a lecture.[39] The *Life* photograph showcased McLaurin's daily view of only the first two rows of desks in the classroom, all of which were filled with white students. Based on this photograph, there was not one, but at least two, pillars obstructing McLaurin's view of the instructor and the chalkboard. Further, he was seated directly next to a third pillar at the back of the room, thereby blocking him from the view of any other members of the class.[40]

McLaurin's position in the classroom raised a couple of concerns. Obviously, the neighboring pillars and the awkward angling of the desk led to a poor view of the chalkboard, instructor, and the lecture. For any student, this would be a problem, as they would most likely miss pertinent class information. Additionally, for McLaurin, age was also a factor. As previously stated, McLaurin was sixty-eight-years-old when he started his doctoral program. Due to his age, he may have developed some eye-sight problems that might have required him to sit

---

[38] Ibid., 3.
[39] Ibid.
[40] "Campaign Windup: Voters have Cut Through the Hoopla to Make Decisions on Men and Issues," *Life* 1 November 1948: 32.

closer to the chalkboard in order to see the lesson. If he was restricted to a corner desk with an obstructed view, how much of the class time was spent trying to see what the professor wrote on the chalkboard? By the end of every class, McLaurin may not have learned any information because he was so focused on trying to see around his obstacles.

Although McLaurin experienced the negative connotations, the harms also extended to his white peers. In addition to the impaired view of the lecture, McLaurin was unable to see the students sitting in the back of the classroom. If he could not see these students, then they most likely could not see him either. This caused a number of problems for both McLaurin and his classmates, as neither he, nor they, had the chance to interact with each other to discuss class material or ask questions. Because he was hidden from these classmates, some may not realize that he was in their class. As a result, they will not think to include him when it came to studying and learning class material outside of the scheduled instruction. This factor continued to negatively affect the white students. McLaurin had a number of years of work experience in the education field, as well as a Master's degree. As an experienced educator, he could provide valuable knowledge and insight to his fellow students. But by enforcing segregation in the classroom, many students would not be able to use McLaurin as a valuable learning resource.

Physical separation and lack of interaction with McLaurin were not the only reasons his white classmates were negatively impacted by segregation. Based on the reaction of some of his classmates who fought for him to sit in the main study areas of the library and taking down the roping around his desk, it was assumed that not all of McLaurin's classmates agreed with the University's segregation policies. Why did they react this way, and why did the University continue to segregate McLaurin despite the student population's reactions? The "AVC Brief" explained that the segregation policies were implemented without regard to the entire white

community at the University of Oklahoma. Although a number of individuals, especially students, expressed their feelings against segregation, there were most likely students who wanted the segregation enforced. The "AVC Brief" explained that the desires of the latter group were taken into account and the beliefs of a few were imposed on all regardless. As a result, students who chose to fight against the segregation entered "a cycle of guilt, insecurity, distrust, antagonism, and prejudice."[41] Although the University may have wanted to implement these feelings on McLaurin and any other black students, they also directed it to a portion of their white population.

Finally, to explain the racist nature of segregation and overall treatment of African Americans and the impact whites had on the practice, the "AVC Brief" outlined a type of reverse segregation. According to the "Brief," there were a number of accounts in which southern states favored rewarding whites who felt demeaned and "'humiliated'" because they were not completely separated from the black community, such as having to ride in a train car reserved for blacks.[42] The "AVC Brief" viewed these cases as confirmation that being black was associated with negative connotations in the United States. The rulings established blacks as an "inferior caste status" that whites refused to be mistaken with.[43]

Similar to the "Brief of the Committee of Law Teachers Against Segregation in Legal Education" in *Sweatt*, the authors of the "AVC Brief" combined the non-traditional evidence with two of the Supreme Court's typical forms of jurisprudence: original intent and precedent. In the seventy plus years since the Fourteenth Amendment was ratified to the Constitution, a number of questions emerged regarding the Framers' original intent. What did the writers of the

[41] Brief of American Veterans Committee, Inc. (AVC) Amicus Curiae, 5-6.
[42] Ibid., 8-9.
[43] Ibid.

Amendment mean when preventing states from "deny[ing] any person…the equal protection of the laws?"[44] According to the "AVC Brief," the original intent of the Fourteenth Amendment was to prevent African Americans from being deemed "'second-class'" citizens, establish them as equal to white Americans, and prevent feelings of inferiority from developing due to unequal laws, including Jim Crow.[45] Under this interpretation, the AVC believed that segregation and *separate but equal* violated the Fourteenth Amendment.

To further emphasize their point, the "AVC Brief" examined previous cases from cases regarding the original intent of the Fourteenth Amendment. In *Strauder v. West Virginia* in 1880, the Supreme Court determined that the Fourteenth Amendment intended to protect African Americans from laws that established them as the inferior class in the United States. In *Ex parte Virginia*, also decided in 1880, the Supreme Court once again explained that the Fourteenth Amendment created equality between whites and African Americans, and thereby helped the latter move away from an inferior class status. These two cases were critical to the AVC's argument, as they connected social science research to original intent of the Fourteenth Amendment and provided evidence of precedent the Court could follow.

To close out their argument, the AVC endorsed Justice John Marshall Harlan's lone Dissenting Opinion from the *Plessy v. Ferguson* in 1896. Part of Harlan's famous Dissent mentioned his claim that state-mandated segregation intended to sustain black feelings of inferiority. A number of social science studies that examined segregation and its impacts, especially those cited in the "AVC Brief," reiterated Harlan's statements: segregation enforced blacks as an inferior class in American society and, because they were separated from their white

[44] U.S. Const. amend. XIV, Sec. 1.
[45] Brief of American Veterans Committee, Inc. (AVC) Amicus Curiae, 10.

peers, led to psychological harm.[46] Harlan's Dissenting Opinion was still relevant by 1950, as the "AVC Brief" claimed that the consequences of the University's segregation policies prevented McLaurin – and any other black graduate students – from receiving a proper graduate education. Under the Fourteenth Amendment, the University could not sustain such rules and continue creating an inferior status for black students.

Using non-traditional evidence that lacked a concrete definition, the "AVC Brief" worked to show the psychological harms of segregation for everyone involved. Psychologically, segregation led to McLaurin, and other students, feeling inferior amongst their white peers within a supposedly integrated institution. These feelings resulted in long term consequences, as all students' education was negatively affected. In the end, the University of Oklahoma needed to consider if the perceived benefits of McLaurin's segregation outweighed the detrimental psychological harms for all involved.

Social Science Studies in the "AVC Brief": Myrdal and McLean

The core argument of the "AVC Brief" – that segregation inherently harmed the students and their education – was strengthened with the use of non-traditional legal evidence and texts. Much of this evidence contained social science research in order to explain the psychological impacts of segregation. By taking advantage of a flexible, under-developed definition of social science, the AVC was free to use any social science studies to mold its claim. With this in mind, the AVC incorporated a dozen social science studies centered on observations and literature to explain the psychological harms of segregation. Rather than conduct conventional lab

[46] Ibid., 11-2.

experiments, the social science studies in this critical brief showcased future implications of segregation, the current trends, and explanations on how the nation reached this point in the era of Jim Crow.

Throughout this lengthy section, two pieces of social scientific literature cited in the "AVC Brief" will be analyzed: Gunnar Myrdal's *An American Dilemma* and Helen V. McLean's "Psychodynamic Factors in Racial Relations." These studies have been selected based on their prominence in the "AVC Brief," the arguments they make, and how they were incorporated in the psychological harm argument made by the Vinson Court in the unanimous *McLaurin* Opinion. Both studies contained critical information explaining segregation and racism in society and college-level education, especially in relation to the psychological views of both blacks and whites.

A social science study cited numerous times throughout the "AVC Brief" was Gunnar Myrdal's *An American Dilemma.* Published in 1944, Myrdal – a Swedish economist – started his research in the 1930s at the request of the Carnegie Corporation. Founded by famed steelmaker Andrew Carnegie, the Carnegie Corporation aimed to inform the people of the United States about their society, including relations between whites and blacks. After World War I, the Corporation became interested in racial issues as more blacks moved from the southern states to the northern states during the Great Migration. As a result of the Migration, blacks experienced new types of "poverty, prejudice, and violence" in the North.[47] In light of these regional and societal changes, the Corporation was interested in examining racism throughout the United States. In 1937, the Corporation's president, Frederick Keppel, approached Myrdal and his wife,

[47] David Southern, *Gunnar Myrdal and Black-White Relations*: *The Use and Abuse of An American Dilemma 1944-1969* (Baton Rouge: Louisiana State University Press, 1987): xiii, 2.

Alva, to lead a study to observe and record racism and racial relations throughout the United States.[48] After seven years of studying people in both southern and northern states in all areas of life – ancestry, slavery, social classes, the justice system, and education – the two volume, 1,200-page study highlighted a number of characteristics about racism in the United States.

Myrdal focused his observations on a number of areas of social science to prove that segregation was wrong. For background information, he began by explaining the evolution of the so-called "American dilemma" and how this dilemma harmed white society in addition to African Americans. Next, he called for the nation's social scientists to shift into the role of a social engineer. To follow, he evaluated the role of bias in present-day social science and how such "status-quo"-affirmed bias influenced racial problems. Finally, citing work from other scholars, Myrdal examined why social inequality existed in the United States and its lasting implications. Each of these areas contributed to Myrdal's core belief and conclusion that segregation and racial tensions were profoundly harmful in all components of American society. In conjunction with his main points, Myrdal's argument was amplified by the under-formed definition of social science. Without a definition, Myrdal tailored his study towards a sociological standpoint that focused on how segregation impacted American society and called for drastic changes in racial relations and the social science community.

Through his observations of United States society, Myrdal concluded that the nation had two significant problems with race. First, Myrdal learned that the United States' racial problems were much bigger than originally assumed. Second, the root of the problems stemmed from the self-interested conduct and values of white Americans. During his observations, Myrdal found that a "great majority of white Americans" had "negative connotations" of American society and

[48] Ibid., 1, 3, 5.

African Americans because of racial issues.[49] This was because of the dilemma between the American Creed and the structure of United States society. According to Myrdal, the American Creed is the concept that "the American thinks, talks, and acts under the influence of high national and Christian percepts."[50] In other words, the American Creed defined the ideal life that Americans, particularly white Americans, wanted to lead. They believed that they held themselves to high moral standards that made them the best in society. Americans allegedly abided by the American Creed by exhibiting "liberty, equality, justice, and fair opportunity for everybody."[51] In reality, however, very few people actually followed the American Creed. This was where the American dilemma came in: Americans wanted to believe they upheld these high moral standards in their everyday life, but it was difficult to do so because of "interests…jealousies…prestige and conformity…prejudice…and all sorts of miscellaneous wants, impulses, and habits" that contradicted the American Creed.[52]

Myrdal explained that the American dilemma did not exist only between groups; it also existed as an internal dilemma, or conflict, within each person. Humans constantly faced compromises with their beliefs, especially when it came to white Americans and racial relations. As a result, Myrdal concluded that racial problems between black and white Americans – including segregation – stemmed from white Americans, their dilemma between the American Creed, and their failure to uphold the high standards. After questioning how to overcome the American dilemma, Myrdal proposed that the only way to resolve it was to recognize that

[49] Ibid., 8.; Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (New York: Harper & Row, Publishers, 1944): lxix.
[50] Ibid., lxxi.
[51] Ibid., lxxii.
[52] Ibid., lxxi.

segregation was harmful and to counteract the practice by encouraging social change. This was one of his main goals when publishing *An American Dilemma*.[53]

In order for social change to occur, the social science community needed to take the first steps. Although he was a social scientist himself, Myrdal was critical of the current system of social science research in the United States. According to Myrdal, many American social scientists in the 1940s treated their research with a "'do-nothing' tendency."[54] By this, he meant that social scientists were not actively applying their findings to correct the wrongs of society. Further, social scientists were not considering a number of values and beliefs, such as the American Creed or the American dilemma, in their work. As a result, a number of biases were present – but not acknowledged – in social science studies and continued to encourage segregationist views.

Of course, bias is an unavoidable factor in social science research. Myrdal was not trying to eliminate the presence of bias. Rather, he opposed the well-known practice of social scientists refusing to acknowledge the biases. Under this practice, social scientists only enhanced segregation and racism. To elaborate, Myrdal described six types of biases that contributed to the American dilemma. One common characteristic of each bias was that they favored findings that only reported the good news regarding racial relations that the public wanted to hear and avoided the negative connotations.

For example, in Appendix 2 of *An American Dilemma*, one type of bias was "the scale of radicalism-conservatism." Under this bias, the social scientist tended to sympathize with African Americans prior to conducting a study. The scientist understood the inferiority African

[53] Ibid., lxxv-lxxvi.
[54] Ibid., 19.

Americans felt compared to whites, but they wanted to present their data in a way that made it appear that they were not experiencing any problems. Instead of showing the racist nature of segregation and how it enhanced the cycle of poverty among the black community, social scientists showed that African Americans were living in a financially stable and open-minded society. As a result, Myrdal claimed, the social scientist was only interested in studies that "favor[ed] the Negro cause" and disregarded the adverse sides of segregation.[55]

This particular bias was a result of the social scientist aiming to eliminate the American dilemma within their research. At the time, social scientists were objectively aware that African Americans were experiencing segregation and its negative connotations, but they wanted show the public that the problems were nonexistent. If the social scientist showed the world that African Americans were not being hindered from segregation, nor inferior to whites, then that may also resolve the public's American dilemma. Even though this was the result that the public preferred to hear – as it lined up with the ideals of the American Creed – it was not reality. By avoiding the harsh negative realities of race relations, the contradictions and strains from the American dilemma continued to intensify. Myrdal argued that in order to invoke social change, social scientists needed to, at the very least, acknowledge any biases that may be present in their research. In addition, they also needed to adjust their methods of research to incorporate the appropriate values and beliefs, including the American dilemma.[56]

To accomplish this, Myrdal urged social scientists to become social engineers. As a social engineer, the social scientist utilized purposeful research in order to carry out societal transformations through their work. Their findings looked towards the future and worked to

[55] Ibid., 1038.
[56] Ibid., 1059.

implement "scientific plans for policies aimed at inducing alternations of the anticipated social trends."[57] With this call, Myrdal proposed for the social scientist to become an advocate for change. They would structure their research, evaluate their findings, and report the final results to the public with the intention that society could utilize their work to solve social issues like the American dilemma. By publishing *An American Dilemma,* Myrdal hoped to take the first steps and persuade social scientists to follow his lead as a social engineer to create lasting, impactful changes to American law, society, and culture.

In addition to Myrdal's main arguments regarding bias and the role of the social scientist, the "AVC Brief" focused on two specific chapters in *An American Dilemma* to explain why implementing segregation was wrong. These chapters were Chapter 28, titled "The Basis of Social Inequality," and Chapter 30, titled "Effects of Social Inequality."

"The Basis of Social Inequality" explored how segregation and discrimination functioned in society in the late 1930s and early 1940s, specifically in the southern states. As referenced in the "AVC Brief," Myrdal found that segregation was a one-sided phenomenon. In other words, segregation was usually enforced by whites and received by blacks; there were no signs of whites being segregated by blacks. Myrdal illustrated this finding with the example of a church: if a black man attended mass in a white church, he would not be welcomed. But if a white man attended mass in a black church, the entire service would welcome him and treat him with hospitality. This system was in place in order to create the racial caste system in the United States.[58] As long as blacks remained in their own lower sphere, whites had the mobility to enter any facility or social circle they pleased.

---

[57] Ibid.
[58] Ibid., 574-6.

Myrdal continued the chapter by tracing the roots of segregation through United States history, going as far back as the Atlantic Slave Trade. The purpose of this was to show that the harms of segregation pre-dated the founding of the United States. Myrdal explained that segregation reflected many of the social values that came from slavery, especially social inferiority. During the decades of slavery in the United States, African Americans were degraded as the inferior class: they were ruled by white masters, always excluded from the life of their master's family, and lived in poor, secluded areas of the plantations that they worked on. Slavery created the "social isolation" that carried into segregation.[59] Although some progress to eliminate social isolation was made during the Reconstruction Era, former slaves were not entirely assimilated into white America. In fact, these efforts may have increased racist values, especially in southern states, where "nothing irritated the majority of white Southerners so much as the attempts of Congress and the Reconstruction governments to remove social discrimination from public life."[60] After years of being the superior class, many whites were unhappy with the laws that made blacks their equal. As a result, by the turn of the twentieth century, Jim Crow Laws were placed in order to reinforce white rule over blacks, regardless of the progress made after the Civil War.

With Jim Crow Laws, the United States, once again, split into two spheres: one for whites and one for blacks. This time, instead of establishing a white-master black-slave relationship, both spheres were supposed to be *separate but equal*; they were intended to be identical and help one another progress in society. But in practice, whites gained their dominance as the superior class while "the Negroes were continuously pushed backwards" and remained the inferior

[59] Ibid., 577-8.
[60] Ibid., 579.

class.[61] Myrdal concluded that the concept of *separate but equal* permitted the establishment of a discriminatory and unjust caste system, even if whites argued that this was not the case.[62]

Two chapters later, "Effects of Social Inequality" examined the harms segregation imposed on the black community. As argued in the "AVC Brief," segregation forced blacks into a lower, inferior social class, while whites were privileged into a seemingly superior social class. Like much of *An American Dilemma*, Myrdal found this most prominent in the southern states, but it was not completely eliminated from the northern states. To back up his points in this chapter, Myrdal referred to early twentieth century articles written by Booker T. Washington. Washington, a well-known African American educator and author, expressed many of the same views and conclusions regarding segregation: segregation was unjust, inconsistent, inferior and hypocritical.

In relation, both Myrdal and Washington believed that segregation prevented upward economic mobility for blacks, particularly in the job market. Myrdal explained that because of their assigned inferior class status through segregation, blacks were barred from middle-class careers, such as bankers, nurses, and store workers. Similar situations also occasionally happened in public sector jobs, such as public education or the military. By being restricted to the lowest jobs available, blacks were provided very few benefits, such as adequate health insurance, proper education and training, and safe neighborhoods. These restrictions created an endless cycle of poverty for many blacks; if segregation prevented them from expanding in the work force, how were they expected to move out of poverty and into the middle and upper classes?[63]

---

[61] Ibid., 579-80.
[62] Ibid., 581.
[63] Ibid., 642-3.

Myrdal summed up this chapter with an analysis of changing black-white relationships. Following Reconstruction and Emancipation, segregation became more voluntary, as each race tended to separate themselves from the other. As a result, white Southerners stereotyped that African Americans were "'happiest among themselves'" and did not seem to mind the segregation.[64] This stereotype, as well as others that emerge, may have developed from the biases expressed by other social scientists in order to paint a positive image of the black community and to settle the American dilemma. But this stereotype continued to be detrimental to social change as future generations learned to keep the black and white spheres of society separate. Eventually, the stereotype would lead to blacks and whites living their own lives completely apart from each other. Some believed that this was a natural occurrence, but Myrdal believed that it was a result of segregation. Myrdal expected more interaction between the races than these "casual contacts" that would go on to "create and preserve stereotypes of Negroes in the minds of the whites."[65] With the reinforcement of stereotypes, any attempt at integration was diminished.

Overall, Myrdal's *An American Dilemma* had a profound impact on the social science community, particularly with his emphasis on social scientists acknowledging bias and the call for social engineering. With this attempt to re-invent social science interpretation, Myrdal effectively drew attention to the flaws of the then current-day research and linked these shortcomings to persistent societal problems regarding racial relations. The broad subjective, righteous and encouraging nature of *An American Dilemma* no doubt reflected the ill-formed definition of practical and functional social science. As there were no strict rules to abide by for

[64] Ibid., 648.
[65] Ibid., 647-51.

his research, Myrdal seemed to have full flexibility in his research methods, conclusions, and interpretations. Studies like *An American Dilemma* allowed the AVC and NAACP to structure their arguments around a plethora of concepts and conclusions related to social science. With the flexibility to interpret social science in any fashion that strengthened its argument, the NAACP could rely on the subject and future research to fill any voids in the school desegregation cases.

A second study cited in the "AVC Brief" is Helen V. McLean's "Psychodynamic Factors in Racial Relations." Published in 1946, McLean, a clinical consultant at the Chicago Institute for Psychoanalysis, examined the complexity of racial relations between blacks and whites in the United States. However, unlike some of the other social science studies cited in the "AVC Brief," McLean did not make direct observations nor relied on conventional experiments to build her argument. Instead, she mostly utilized various types of literature, including other social science studies (such as Myrdal) and even fiction novels (such as Richard Wright's *Black Boy* (1941) and Lillian Smith's *Strange Fruit* (1944)). Because of her use of fiction, some may struggle to see the significance of McLean's study. However, the literature she used made her study stand out, as she claimed that the fiction novels depicted the life of the African American and were "psychologically valid human documents."[66] The cited literature provided the reader an evocative glimpse of what the life of an African American was truly like, including the negative effects of segregation.

Within her article, McLean claimed that segregation was wrong in two ways: the psychological impacts on blacks led to serious health (and psychological) problems and segregation was a method to feed the white ego. Rather than look at a specific area of segregated

[66] Helen V. McLean, "Psychodynamic Factors in Racial Relations," *The Annals of the American Academy of Political and Social Science* 224 (1946): 160, 166, *Sage Journals*, Online (accessed on 4 April 2018).

society, McLean examined a number of areas that related to the social sciences, including the "economic, social, and psychological state" of African Americans.[67] In all three of these areas, McLean found that African Americans struggled so much that they were asking for help from white Americans. McLean explained that this was the case because African Americans were at such a low status in society – in terms of self-esteem, prestige, security, and so on – that they had little to lose by trying to find help from any source, even from the group that enforced segregation upon them. Additionally, while African American adults were trying to find ways out of the low social status of society, their children were already feeling the effects of segregation even before they entered school.[68]

McLean found that race relations and segregation in the eyes of children led to lifelong mental and physical consequences. As young children, African Americans observed how their parents were treated by the white community and eventually picked up on the anxieties of being black in the United States. In addition, children also felt anxious when engaging with the white community out of fear that they would be rejected because of their race. Both scenarios led to African American children forming a dilemma over their race: do they accept their race and take on the inferior class status that whites imposed, or do they attempt to be part of the white community and get rejected? These feelings of anxiety, aggression, and confusion continued to grow as the children entered adulthood. After a lifetime of confusion and anxiety over their race, McLean explained that African Americans were at risk for a number of health problems, including heart disease and high blood pressure.[69] This portion of McLean's article claimed that segregation not only caused low self-esteem and mental health problems; the practice also

[67] Ibid., 160.
[68] Ibid., 160-1.
[69] Ibid., 161.

contributed to serious medical conditions that, if left untreated, could be fatal later in life. These proposed stresses and physical harms that African Americans living under Jim Crow suffered from contributed to the argument that segregation was wrong.

To depict the struggles of black children living with Jim Crow Laws, McLean acknowledged Richard Wright's autobiography *Black Boy*. Coupled with his previous novel *Native Son, Black Boy* depicted Wright's childhood of growing up black and some of the challenges he faced. For one, Wright's childhood career ambitions did not line up with the black stereotypes of the time. As members of the inferior social group, it was difficult to break out of the cycle of poverty by getting an education. But a young Richard declared that he was going to "'study medicine, engage in research, [and] make discoveries,'" which was a field very few black children aspired to at the time.[70] Up until high school, young Richard struggled to achieve his goals, as he did not have access to high quality educational resources, such as a library, to learn from. At one point, young Richard wrote a note to a librarian in order to gain access to a segregated library. Young Richard's language used in the note depicted himself as a white boy, as he knew this was the only way to "gain access to educational resources" and "achieve larger goals and degrees of liberation."[71]

Even as a child, Wright understood that he did not have the same access to resources as whites to get ahead educationally, economically, and professionally. In order to achieve his goals, he had to pretend to be white instead of fully embracing his African American roots. If this was the case for other black children, two scenarios could emerge based on McLean's

[70] Howard Ramsby II, "The Vengeance of Black Boys: How Richard Wright, Paul Beatty, and Aaron McGruder Strike Back," *The Mississippi Quarterly: The Journal of Southern Cultures* 61.4 (Fall 2008): 645-6, *ProQuest*, Online (accessed on 23 February 2019).
[71] Ibid.

article: the child would accept their race, and not gain access to any educational resources, or pretend to be white and develop confusion and anxiety that would contribute to the lifelong impacts.

The second reason why McLean believed that segregation was wrong looked towards the white community, starting with the existence of slavery. Building from the European feudal system, white Americans believed that they were superior to African Americans. Up until the nineteenth century, slavery continued to feed the white-ego in the United States. McLean suggested that these feelings of superiority contributed to the American dilemma that Myrdal proposed: under the American Creed, if slaves and their white masters were equal, then why did masters continue to build their power by diminishing the human value of African Americans through slavery? In order for white Americans, particularly men, to uphold the prestige that Europeans established, they needed to remain superior to blacks. Even after the passage of the Civil War Amendments, the unfree labor system resembling feudalism was still admired throughout pop culture, such as the book and film adaptation of *Gone with the Wind.*[72] By continuing to admire the feudal system, slavery, and life in the southern states during the twentieth century, white Americans grew more comfortable with accepting segregation – and the inferiority of blacks – as a way of life.

McLean's final analysis made use of her fiction references, particularly Lillian Smith's 1940s novel *Strange Fruit*. Throughout the novel, Smith portrayed the southern white community as leading boring, empty lives. But when they were exposed to African American religion, music and literature was like – complete with "expression of genuine warmth" – the white community determined what aspects were missing in their lives and looked to adopt these

[72] McLean, 162-3.

features of African American culture.[73] But as attracted as they were to such a lifestyle, southern white norms and customs outlawed such ways of life. Instead of embracing African American culture, whites decided to stop it; for if they are unable to live this life, then blacks should not be able to either. As a result, racial tensions and violence, such as lynchings, emerged throughout the southern states.[74] McLean used *Strange Fruit* to explain that southern whites considered themselves superior to blacks out of fear of the unknown. Embracing African American culture was considered degrading and encouraged a diminishment of the white ego.

To conclude her article, McLean briefly proposed her own ideas to solve the United States' racial problems. If the American dilemma was to be solved, two actions were required: blacks needed to relinquish their hostility and grudges against whites, and whites needed to surrender the power and superiority they believed to possess. With these two changes, both races could work to settle the bad blood and stereotypes they formed against one another and learn how to live cohesively.[75] In order to solve any race problems in the United States, both whites and blacks were required to let down their guards and open up to one another.

McLean's article contributed a great deal of insight to the "AVC Brief" with the use of non-traditional legal evidence. For one, with an under-formed definition of social science and lax rules for conducting studies, McLean's use of popular literature was distinctive. *Black Boy* and *Strange Fruit* were written to exhibit the negative effects of segregation. As essentially a literature review that displayed the reality of segregation in the black community, McLean's article presented the impairments brought on by segregation and how these practices continued to be enforced by the white community. In terms of the "AVC Brief," this helped describe the

[73] Ibid., 164.
[74] Ibid.
[75] Ibid., 166.

unequal education that blacks received and how the white community continued to thrive as the superior class. Further, connecting real-life events to pop culture may encourage some of McLean's readers to grasp what life was like for those in segregated African American community. By providing a unique perspective of the negative implications of segregation, the AVC effectively used McLean's article to portray the lifelong effects on the black community living under Jim Crow.

Court Opinion in *McLaurin v. Oklahoma State Regents*

On June 5, 1950, in conjunction with the ruling in *Sweatt v. Painter*, the Supreme Court delivered a unanimous decision that the University of Oklahoma's actions of segregating McLaurin were unconstitutional. Thurgood Marshall's arguments on behalf of McLaurin forced the Justices to consider the morality of segregation and how the decades-old practice was wrong. While in conference, the Justices ran into two problems: whether to overturn *Plessy v. Ferguson* or not, and how ending segregation in graduate schools would impact elementary and secondary schools.

Some of the Justices were conflicted with the role of segregation by 1950 and contemplated the influences that the *Plessy* decision and a Court's defense of *separate but equal* had on American society. Justice Sherman Minton stated during oral arguments that segregation was beginning to break down and did not have much purpose being enforced. Justice Harold Burton also indicated that segregation, at least in graduate schools, would end within the next decade as this breakdown progressed. Justice Hugo Black believed that segregation was unconstitutional and that both the University of Texas and the University of Oklahoma did not

provide equal facilities. Black also followed the AVC's argument that segregation established an unconstitutional caste system, even going as far to deem it a form of "'Hitler's creed.'"[76] Both Burton and William Douglas were willing to overthrow *Plessy* and desegregate public graduate education on the basis that *separate but equal* indeed violated the Fourteenth Amendment's Equal Protection Clause.[77] Four of the Justices then were willing to rule in favor of McLaurin and end Jim Crow Laws.

A number of the Justices wrestled with the distinction between graduate schools and the elementary schools. Robert Jackson was concerned about the plaintiff's and respondent's arguments, as he claimed that both sides erroneously grouped graduate school and elementary school segregation into one. Jackson believed that there needed to be a distinction between the two schooling levels. By combining them, Jackson described the arguments as "'all or none'" in terms of desegregating the United States education system; either all schools – ranging from elementary to graduate – were desegregated under *McLaurin*, or none of them would be.[78]

Meanwhile, Felix Frankfurter established a distinction between graduate schools from elementary schools by looking at the quality of the schools and their respective missions. Following the *Sipuel* decision in 1948, Frankfurter believed that a graduate school (or a law school) built overnight could not be of equal quality to well-established schools, particularly in terms of faculty members. By examining the concept that elementary schools were created as needed, but graduate schools took years to develop, Justice Black also agreed with Frankfurter's

[76] Tushnet, 140-2.
[77] Ibid., 143.
[78] Ibid., 140-1.

reasoning and made the distinction between graduate and elementary schools based on their founding.[79]

Despite the unanimous Opinion, there were three Justices who were initially conflicted with overthrowing *Plessy* in 1950: Chief Justice Vinson, Stanley Reed, and Tom Clark. Like Jackson, Vinson's conflict dealt with endeavoring to distinguish between graduate schools and elementary schools, and even contemplated upholding segregation if he could not apply the difference. Although Vinson believed that African Americans should, in principle, be educated at any university they were admitted to, he understood how controversial desegregation and overthrowing *Plessy* would be for the country. Looking back at precedents and history of public education, Vinson claimed that "it [was] hard for me to say schools should not be separate."[80]

Meanwhile, Tom Clark followed Thurgood Marshall's argument that separate schools could never be equal. However, like Vinson, Clark considered how controversial the decision to overturn *Plessy* would be and wanted to determine the best way to end segregation that would not bring on serious tumult and resistance in southern communities. After circulating a memo to the other Justices, Clark expressed some views that were exhibited in the *McLaurin* and *Sweatt* briefs, but he nevertheless did not completely follow the social science evidence presented by the AVC and the Committee of Law School Teachers. Despite his concerns and feeling unpersuaded by the extralegal evidence, Clark stated that he would limit desegregation to graduate schools and "'not sign an opinion which approved *Plessy*.'"[81]

Finally, Stanley Reed, a Southerner, may have been initially the most determined on the dissenting side in *McLaurin*, as he indicated that he would "decisively…uphold segregation"

[79] Ibid., 142.
[80] Ibid.
[81] Ibid., 143-4.

because he believed that desegregation and creating equal facilities was a decision made by the legislatures, not the Supreme Court.[82] He found that the schools, particularly in *Sweatt*, were equal in terms of providing a quality education but he did consider additional evidence – perhaps even social science literature – that showed the facilities were unequal and persuaded him to join the Majority Opinion.[83] With each of the Justices on board, segregated graduate and professional schools was deemed unconstitutional.

Eight of the nine Justices (excluding Reed) initially believed that *Plessy's* ruling of *separate but equal* was no longer applicable to American society by 1950. But the *McLaurin* Opinion did not overthrow *Plessy v. Ferguson* to completely end segregation. Instead, it referenced what the NAACP and the AVC argued with the social science studies: McLaurin received an inferior, unequal education due to the University's actions of segregation within the school. Although Chief Justice Vinson did not cite or acknowledge the "AVC Brief" or related social scientific sources, his explanations for declaring an end to McLaurin's segregation echoed particular elements of the argument outlined in that particular brief. Instead of overturning a major precedent in *McLaurin*, the Vinson Court established the first steps of utilizing sociological jurisprudence.

Vinson authored the unanimous Opinion for the Court that ran just over five pages long. He deliberately kept this Opinion short in order for Frankfurter to sign on, as he claimed that having a short Opinion would attract little attention to the drastic decision and decrease the emotional responses from the public.[84] The bulk of the Opinion chronicled the path McLaurin took for his case to reach the Supreme Court: originally being denied entry due to his race, the

[82] Ibid., 143.
[83] Ibid.
[84] Ibid., 145.

lower courts references to *Gaines* and *Sipuel*, the state amendment that allowed the University to segregate McLaurin in the school, and the segregation that McLaurin experienced. Vinson also mentioned the adjustments that the University made while arguments were being made in Court, such as the change from a single roped-off seat for black students to an entire row of seats. At this point, Vinson undoubtedly looked towards the "AVC Brief" to explain the harms of McLaurin's segregation: "such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."[85] As similarly chronicled in the "AVC Brief," these barriers emerged in many instances and circumstances pertinent to McLaurin's doctoral education from studying to socializing to learning in the classroom. Even though he was in the same school and classroom learning the same lessons from the same instructors, McLaurin was not receiving the same education as his peers.

Significantly, Vinson continued the Opinion by glancing into the future. Once he obtained his doctoral degree in education, McLaurin would most likely work with students who were learning the ways of the world and could possibly be the next generation of leaders in the United States. If McLaurin was poorly educated at the University of Oklahoma, and went on to teach younger students with this educational background, how would his students be affected? Vinson was concerned with this outcome. In order to properly educate the next generation of United States citizens and promote democracy, McLaurin needed to be properly educated himself, as his impaired education had the potential to carry into his career. As a result, his students' "own education and development will necessarily suffer."[86]Once again, Vinson's views

[85] Chief Justice Fred Vinson, Opinion of the Court, McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).
[86] Ibid.

regarding the education of future Americans and democracy resembled traits of both the "AVC Brief" and even the "Brief for the Committee of Law Teachers Against Segregation in Legal Education" submitted in *Sweatt*.

Finally, the Opinion concluded with a counterargument that the NAACP possibly viewed as a negative. With the *McLaurin* decision, other African American could not legally be separated from their peers within the same learning facility. However, Vinson argued that deeming this form of segregation unconstitutional would not create new feelings towards black students; in other words, societal segregation may prevent desegregation from occurring amongst social groups. Although he thought this as a possibility, Vinson explained that deeming McLaurin's institutionally-mandated segregation illegal was a key component of the Court's decision. The law would no longer force McLaurin – and other African American students – to be separated from their peers within school. Rather, if he was to be separated from his peers, it would be on their accord without any influence from the University of Oklahoma. Vinson believed that as long as the law did not force "restrictions…which prohibit the intellectual commingling of students" and the University provided McLaurin with access to the same education, separation by students was not illegal.[87] Based on this interpretation, the Court ruled that segregation by law was unconstitutional, yet personal decisions made by private citizens regarding segregation made in the public education setting were still legal.

Based on the Opinion, it did not seem like social science evidence was particularly influential, and some of the Justices even considered it unimportant. Nonetheless, the AVC's presentation of social science evidence persuaded Vinson, as he explained that McLaurin's education was unequal due to his feelings of inferiority. With little experience utilizing

[87] Ibid.

sociological jurisprudence, the Supreme Court chose to not cite social science studies nor the "AVC Brief." Perhaps this was part of Vinson's strategy to achieve a unanimous Opinion. Since some of the Justices, namely Clark, stated that they did not follow the social science evidence, formally citing social science may have resulted in a concurring or dissenting opinion to emerge. As will be seen in *Brown v. Board of Education* in 1954, a unanimous Opinion was critical to the Supreme Court achieving their intended goals.

Final Remarks

With the *McLaurin* decision, Thurgood Marshall and the NAACP made momentous strides towards desegregation. In conjunction with the AVC, non-traditional legal evidence was effectively used to display the psychological harms of segregation. With the help of the "AVC Brief," the Vinson Court ruled in favor of McLaurin and determined that his segregated education was not equal to his white peers, even if he was enrolled in the same institution. Marshall's goal of proving that separate education was unequal education was on its way to being fully acknowledged.

Even though Marshall's argument was agreed upon in the Supreme Court, the recognition of social science research and segregation was not fully developed. As one of the first incidents of this evidence presented in order to show the psychological harms and wrongdoings of segregation, *McLaurin* set a precedent for the use, interpretation, and acknowledgement of social science research, especially with the lead up to *Brown v. Board of Education* in 1954. As a relatively new field of evidence in the Supreme Court that contained an under-formed definition, social science was capable of taking on a whole host of perspectives. Nevertheless, there was

still room for social science research to gain its footing in the Court, yet still remain fluid in definition and interpretation.

As will be seen throughout *Brown v. Board of Education*, presenting social science in the Supreme Court to expose the psychological harms of segregation was an attractive tactic for the NAACP. In order to disarm segregation, the negative implications, both short-term and long-term, needed to be shown. As social science evidence progressed in the Supreme Court over the next half century, the field transitioned into other research interests and looked to firmly establish the role of the social scientist. In the end, *McLaurin* serves as a stepping stone to lead the NAACP, the Supreme Court, and the social science community to a new era of desegregation and sociological jurisprudence.

Chapter 2

The Acknowledgement of Psychological Harm: *Brown v. Board of Education* (1954)

In 1954, the Supreme Court decided in *Brown v. Board of Education* that segregation was unconstitutional. With this decision, the concept of *separate but equal* established by *Plessy v. Ferguson* (1896) was overruled. A combination of four district court cases, the main goal of *Brown* was to bring a definitive end to the notion of *separate but equal* and the practice of racial segregation under the law throughout all forms of United States public education. To accomplish this, the NAACP – the lawyers representing the plaintiffs in this case – needed to show that segregation had no place, nor benefits, in American society. One of the central ideas was to present how segregation harmed the population, especially all children attending segregated schools. But what would convince the Court that segregation was harmful to both black and white elementary school-aged children?

Like their recent arguments in *McLaurin v. Oklahoma State Regents* in 1950, NAACP lawyers Robert Carter and Thurgood Marshall turned to, and relied greatly on, social science evidence and the psychological harms caused by segregation. By trying to prove the harmful mental and psychological side effects of school segregation, looking at social science evidence would be a highly appealing option. But unlike *McLaurin* and its "AVC Brief," in order to collect and utilize as much research as possible, Carter and Marshall worked with academic social scientists to write an Appendix to Appellants' Brief entitled "The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement," also known as the "Social Science Statement." At twenty-four pages, the "Statement" was submitted to the Supreme Court

on September 22, 1952, just before the first round of arguments began. The intention of the "Statement" was to provide research, data, and expert testimony showing the Court that segregation was wrong and led to psychological problems for all children involved.

Many of the characteristics of social science evidence from *McLaurin* carried into the social science evidence presented in *Brown*. For one, throughout the "Social Science Statement," and many of the cited studies, the absence of a full-formed definition of social science was prevalent; the "Statement's" argument was built around the missing definition. Further, as the "Statement" explained the psychological harms that segregation had on United States society, it worked to incorporate itself into the realm of constitutional-legal jurisprudence. And, continuing from *McLaurin*, presenting social science research in a court of law was a strategy that many still struggled to make sense of.

Some researchers and lawyers took advantage of the flexibility. Without a concrete definition, social science could be molded to enhance the social scientists' and NAACP's arguments. But on the other hand, the overlap of social science and the law created a gray area that Justices and researchers fought to decipher. Finally, social scientists and the Supreme Court Justices needed to grapple with the usage of social science in the courts: how could the Justices use the research that would follow their legal training, and did social scientists need to become agents of change with their research that Gunnar Myrdal proposed in *An American Dilemma*?

Even with the similarities between *McLaurin* and *Brown*, key differences emerged between the two cases as the Supreme Court recognized and used social science evidence. While the *McLaurin* Opinion did not contain any formal citations of the presented social science evidence, the *Brown* Opinion marked the first explicit recognition of social science evidence with the inclusion of Footnote 11 and a number of pieces of social science literature cited by the

NAACP in the "Social Science Statement." As a result, there was one additional factor in *Brown* that was not very prevalent in the *McLaurin* social science evidence: the critics. Following the *Brown* Opinion in May 1954 and the Court's acknowledgement of psychological harm from segregation, a number of criticisms presented by legal scholars regarding the flaws in the "Social Science Statement" and its cited research emerged. Significantly, one of the most common critiques presented was the absent definition of social science. Although there has been little acknowledgment, and even outright rejection, of the relevance of social science in *Brown* according to scholars and critics, the citations in the unanimous Opinion, written by Chief Justice Earl Warren, and the inclusion of social science studies in Footnote 11 suggest that the Court deemed the evidence important and relevant in deciding *Brown*.

Throughout this chapter, the usage of social science evidence to exhibit the psychological harms of segregation will be analyzed. To do so, in addition to examining the "Social Science Statement" and how it came to existence, four pieces of cited social science literature from the "Statement" will be analyzed: three studies conducted by Kenneth and Mamie Clark and one survey led by Max Deutscher and Isidor Chein. These four studies were selected based on their prominence throughout the *Brown* "Social Science Statement," their citations in previous school desegregation cases and social science literature, and the critics' remarks about the studies and their researchers after the Opinion was announced. To follow, the Opinion of the Court and the various constitutional interpretations of the Justices will be examined, particularly how many came to a unanimous Opinion with the assistance of social science evidence. Finally, the criticisms presented by legal scholars and the flaws they discovered in the "Social Science Statement" and its cited research – including the absent definition – will also be examined. By exploring the four studies, the "Social Science Statement" from *Brown*, the respective lines of

jurisprudence of the Justices, the unanimous Opinion, and what legal scholars had to say about social science in the Court, this chapter will characterize the nature and leading traits of the social scientific psychological harm argument advanced by the NAACP lawyers in *Brown v. Board of Education* and fully consider how the Court responded to such.

Background of the Case

Brown v. Board of Education took on four separate school desegregation cases that were appealed to the Supreme Court. The four cases originated in two southern states and two states outside of the South: South Carolina (*Briggs v. Elliot*), Kansas (*Brown v. Board of Education of Topeka*), Delaware (*Belton v. Gebhart*), and Virginia (*Davis v. Prince Edward County*).[88] However, because Oliver Brown was the "principal plaintiff," his name and the Topeka School Board earned itself a spot on every title page of every brief.[89] The Browns' journey began at their Kansas home in the summer of 1950, when a pamphlet for the Summer School – a nearby white elementary school – appeared at their door. As the 1950-51 school year approached, Oliver Brown considered the pamphlet to be an open invitation to enroll his children at the Summer School. With this idea in mind, Brown tried to enroll his seven-year-old daughter, Linda, into the whites-only school.

Despite the pamphlet, the Topeka School District's guidelines did not allow the enrollment of a black child into a whites-only school in 1950. The District designed its school system in a specific manner based on racial segregation, dividing the city into "eighteen

[88] John P. Jackson, Jr, "Creating a Consensus: Psychologists, the Supreme Court, and School Desegregation, 1952-1955," *Journal of Social Issues* 54.1 (1998): 147, *EBSCOhost*, Online (accessed on 23 October 2017).
[89] Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 2004), 408.

territories [set up] for school purposes."[90] At the elementary level, the District consisted of eighteen schools for white children (one school for each territory). But between all eighteen territories, there was a total of four elementary schools for black children, or about one school for every four and a half territories. Students must attend the schools established for their race, even if a black child lived closer to the neighborhood white elementary school. This school structure only existed at the elementary school level in Topeka; once a student completed sixth grade, they were given the option to enroll in the integrated junior and high school.[91]

Enrolling Linda at the Summer School instead of her current school (the Monroe School) made sense for several reasons. To attend the Monroe School each day, which was a mile away from the Brown home, Linda walked six blocks – along a set of train tracks or through a section of warehouses – before catching the bus. Linda recalled that she "preferred to walk on the grassy strips between the tracks" because the streets along the warehouse lacked sidewalks.[92] Meanwhile, the Summer School sat only a few blocks from the Brown home and the route was lined with sidewalks, plants, and well-maintained homes. The commute to school was not only more pleasant for Linda, but it was much safer than choosing to walk along train tracks or through warehouses. Further, the Summer School, as Linda remembered, looked much nicer and more inviting than the Monroe School, as the building was updated with new, pleasant features, such as small towers and a sculpture of children playing. Despite the convenience and quality of the Summer School, Linda Brown was denied enrollment on the basis of the school district's race-segregation guidelines. As a result of her race, Linda was barred from attending any white

[90] Brief for Appellants, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (filed 23 September 1952), *U.S. Supreme Court Records and Briefs, 1832-1978*, Online (accessed on 12 March 2018): 3.
[91] Kluger, 408.
[92] Ibid., 409-10.

elementary school in the Topeka School District, regardless of her, or her family's, reasons. With the rejection in hand, Oliver Brown took the issue to the local branch of the NAACP, which had pulled together similar complaints from other black families and began to develop the basis for its groundbreaking case.[93]

As seen in the precedents leading up to *McLaurin*, *Brown* was not the first school desegregation case to appear before the Supreme Court. So, out of all the school desegregation cases argued before the Court prior to the 1950s, why did Carter and Marshall believe this particular case was the time to attack *separate but equal* head on? Marshall believed that by continuing to not overturn *Plessy* in desegregation cases, the Court was confirming that African Americans were inferior to their white counterparts. Even in cases when the Supreme Court ruled specific variations of segregation unconstitutional – such as *Sweatt v. Painter* and *McLaurin – Plessy* was not formally overthrown.

By using social science, Marshall and Carter intended to prove that segregation was wrong based on its harmful effects and how inferiority negatively impacted students in the United States school system. But proving the inferiority in the school system was just the first step. To get the Court to overthrow *separate but equal*, Carter and Marshall needed to apply the psychological harms of segregation to every member of society.[94]

Carter and Marshall saw education as woven into all aspects of society; the concepts learned, or not learned, in the early years of schooling were critical for the rest of a child's life. In every level of education, black children were at a disadvantage. For example, before they even entered formal schooling, black children, especially those living in low-income and areas of

[93] Ibid.
[94] Ibid., 314, 319-20.

poverty, were less likely to have the resources – "toys, books, magazines, paper, and writing implements" – to build the foundations of their education.[95] As a result, once they entered formal schooling, many black children struggled, and even failed, to learn basic concepts, such as how to read satisfactorily. As time went on, the lack of learning would become more detrimental, resulting in a hatred towards school. With mounting discouragement, frustration, and low self-confidence because of the disadvantages in their education, black students had a greater tendency to drop out of school as soon as they could, thereby severely eliminating the chances of getting out of poverty. Social scientists saw this as a major contribution to an unbroken cycle of poverty among segregated blacks: this generation of students would most likely work low-paying jobs and not have the means to provide a foundation to their future children's education. The fear was that these children would have a similar education as their parents and that they would also drop out of school and be unable to break out of poverty for the next generation.[96]

After reading one of social psychologist Kenneth Clark's studies, Robert Carter strongly believed that social scientific findings indicating the psychological harms on schoolchildren in segregated education was the evidence the NAACP needed to overturn segregation. After the three men met, Carter and Marshall requested Clark's professional help in carrying out three tasks: act as a witness in one of the school desegregation cases (specifically *Briggs v. Elliot*), get other social scientists involved with the cases, and work with the NAACP to come up with a "Social Science Statement" to submit as evidence to the Supreme Court.[97] Out of the dozens of social science studies and scientists, why did Carter and Marshall focus in on Clark? It is plausible that Carter and Marshall may have been influenced by Gunnar Myrdal's call for social

[95] Ibid., 320.
[96] Ibid.
[97] Ibid., 320-1.

scientists to become advocates for social change in his study *An American Dilemma*; perhaps they agreed with Myrdal's view that social change needed to start with a new perspective on social science research and enlisted Clark to be part of this transition. As the "Social Science Statement" was drafted, Clark seemed to embrace this new role of the social scientist, as the research was used to display the long-lasting impacts of segregated education and worked to fix it. Carter and Marshall were supportive of presenting social science evidence in a court of law, but other NAACP lawyers were sure that social science alone would be "unlikely to sway the Justices," especially when it came to some of Clark's more controversial studies.[98] At the time, this view may have been logical, as social science possessed little to no acknowledgement in the Supreme Court and in legal studies. Nevertheless, the three men were eager to start the process of striking down segregation with social science.

The 1952 "Social Science Statement"

Presented to the Supreme Court only in the first round of arguments, the "Social Science Statement" was part of the NAACP's plan of attack early on in *Brown*. In fact, Clark began working on the "Statement" for Carter in October 1951, even before the four individual cases made their way to the Supreme Court. But it was not just Clark that designed and formatted the entire "Statement." To start, a subcommittee within the Committee of Intergroup Relations was created to specifically work on the "Statement." The subcommittee was made up of various social scientists, including Clark, and spent seven months (October 1951-May 1952) drafting the

[98] Ibid., 321.

initial brief that explained the psychological harms of segregation and why the practice needed to end.[99]

As one of the first major briefs to be submitted to the Supreme Court presenting social science research and desegregation, complications regarding the content and structure were inevitable. For one, the subcommittee struggled to create the appropriate balance between a scientific document and a legal document. In other words, how much social science research could be incorporated into the "Statement" yet still satisfy the requirements set forth by the Supreme Court and the NAACP lawyers? Carter considered the original draft by the subcommittee to be more scientific than legal, as it addressed the reasons, rebuttals, and alternative solutions to segregation. Although important, these aspects made the document too complex and technical to be presented in the Supreme Court. The arrangement simply took away from the legal arguments of psychological damage and could not be interpreted using sociological jurisprudence.[100]

In order to be fashioned as a legal document – but also keeping the scientific elements of social science – Clark and fellow social scientists Isidor Chein and Stuart Cook made three major changes to the original draft. First, the style of the draft was adjusted in order to discuss the relevancy of social science in desegregation. Second, they eliminated the counterarguments that explained the purposes of segregation. Finally, they formatted the "Statement" to make a more direct argument: that segregation led to psychological harms.[101] With these changes, the final "Social Science Statement" focused on two key points: "that segregation was psychologically damaging both to minority and majority group children" and the transition to desegregation

[99] Jackson, 148-50.
[100] Ibid., 150-2.
[101] Ibid., 150.

could be done "smoothly…quickly and firmly."[102] With these changes – and the signatures of 32 social scientists – the "Social Science Statement" was submitted to the Court on September 22, 1952. This time, the "Statement" provided a more simplified, objective, balanced argument against segregation along with insight on the positive effects of desegregation.[103]

In order to address segregation's psychological impacts – which made up the majority of the document – the "Statement" started out by defining segregation and the segregated group. "Segregation," in this case, occurred when one group had limited opportunities in a particular setting compared to another group due to their race, religion, origin, or language.[104] At this point in the "Statement," instead of specifically labeling black children as the segregated group, it simply defined the "segregated group" as the group with "lesser social status" when there were signs of unequal social standing.[105] By taking the time to define these two terms, the NAACP was not limiting itself to a specific type racial groups experiencing segregation and could be aiming to use this similar argument in future segregation cases.

Next, the "Statement" explained how feelings of inferiority emerged from segregation, which drew heavily from Kenneth Clark's 1950 study found in the "Fact Finding Report Mid-century White House Conference on Children and Youth." Because black children grew up segregated from whites – and possibly never understood the reason why – Clark maintained that they developed feelings of inferiority, experienced decreasing levels of human dignity, and questioned their self-identity. Children felt as though they were appointed this role in life simply because of their race. Black children's reactions to these feelings varied depending on their

---

[102] Ibid., 152.
[103] Ibid., 155.; Appendix to Appellants' Brief, The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (filed 23 September 1952), *U.S. Supreme Court Records and Briefs, 1832-1978*, Online (accessed on 12 March 2018): 19.
[104] Ibid., 2.
[105] Ibid.

socioeconomic status. Clark found that poor black children acted with more aggression and became "self-destructive."[106] In the long run, these children behaved more aggressively and angerly throughout their life, which continued to fuel their inferior status in society. Meanwhile, middle and upper class black children reacted with aggression, but they also withdrew themselves more from society and felt less inclined to learn in school.[107] In either scenario, the reactions of black children resulted in less time focused on schoolwork and learning and more time trying to find their appropriate place in society.

Next, the "Social Science Statement" examined the impacts of segregation on the majority group. Because the majority group was completely separated from the minority in school, they were learning life's basic skills "in an unrealistic and non-adaptive way."[108] At the same time, they learned what it meant to act in a prejudiced manner towards the minority group and developed the idea that they were the superior group over the minority, resulting in feelings of "confusion, conflict, moral cynicism, and disrespect for authority" as they grew into adulthood.[109] When these two elements were combined, the majority group did not learn how to interact with the minority group and strained their relationships and interactions outside of school. As a result, the majority group experienced negative psychological implications, such as learning to mask their prejudice for the rest of their lives. Even if they realized that treating the minority group this way was wrong, they were taught this in school and did not know how to change their views.

---

[106] Ibid., 4-5.
[107] Ibid.
[108] Ibid., 6.
[109] Ibid.

Incidentally, the children of the majority group are not completely at fault for their prejudice attitudes. These feelings developed because of the adults in the schools that taught them that segregation and prejudice were acceptable. As a result, social scientists, specifically Chein and his research partner Max Deutscher, stressed that "inequalities in facilities" played a crucial role in the psychological effects on both the majority and minority groups.[110] In other words, because the majority group's school did not teach the children how to live and work cohesively with the minority group, and because the minority group's school did not offer the same opportunities to children as the majority's school, they were essentially unequal in terms of providing a proper education and led to psychological damage for the children.

Further, the "Social Science Statement" claimed that the segregated school system and early educational opportunities were the catalyst of the resulting psychological harm. Even before entering formal schooling, children, especially those of the minority group, understood the difference in social status and the influence of race. By the time the child started school at five or six years old, feelings of inferiority were already rooted. Once a child of the segregated minority group entered school, these feelings were confirmed, as their difference in social status resulted in restricted opportunities in the education system compared to their white peers. School shaped how children view the world; in this case, the correlation between race and social status was reaffirmed.[111] If children were taught such lessons throughout their primary and secondary education years, it was permissible that they would continue to carry these lessons beyond the schoolhouse.

---

[110] Ibid., 11.
[111] Ibid., 6-8.

The second section of the "Social Science Statement" dealt with the benefits of integration for black and white children, specifically looking at each group's academic performance. This was where the "Statement" worked to dispel any stereotypes associated with integrated education, such as the effect on a child's intelligence level. Some people believed that putting a child of the "less intelligent group" (i.e. the segregated group) in a classroom with the "more intelligent group" would harm students of both groups, resulting in a "marked competitive disadvantage" for the former and lowered educational standards for the latter group.[112] This, the "Statement" maintained, was not the case, as previous studies found that any differences in the average intelligence scores of black and white children decreased the longer they were in school together.[113] With this supporting research, the "Statement" concluded that it was possible for both black and white students to succeed in integrated classrooms.

To conclude, the "Social Science Statement" proposed a method to effectively implement desegregation. Although there was little evidence of effective public-school integration by the early 1950s, the "Statement" referenced several other areas of society that saw successful integration, such as the military, community centers, the workforce, and housing. In these areas, it was found that many were integrated with little problems and even encouraged "favorable attitudes and friendlier relations between races."[114] In order to have such success, integration needed to happen in a specific manner: all schools need to be integrated at the same time, integration needed to be enforced and monitored on a reliable basis, and each person needs to be treated equally in terms of educational opportunities.[115] This specific point followed along with

[112] Ibid., 12.
[113] Ibid.
[114] Ibid., 15-16.
[115] Ibid., 15-17.

Carter and Marshall's call for desegregating all schools at once instead of just a few. If integration was to immerse itself in schools, it should apply more favorably through all schools at the same time.

The "Social Science Statement" aimed to show the negative psychological effects of segregation for both the segregated group and the segregators. Segregation not only led to low self-esteem and feelings of inferiority among black children; it also created a sense of superiority among white children. As a result, these stereotypes formulated lifelong negative consequences for all children, regardless of race.

Following the pattern in the *McLaurin* "AVC Brief" and its cited social science studies, the *Brown* "Social Science Statement" did not provide the Supreme Court with a definition of social science. Interestingly, the "Statement" did supply definitions for terms such as "segregated group" and "segregation." Why define some terms and not others? By not defining social science – and even broadly defining the "segregated group" and "segregation" – the NAACP and the contributing social scientists were harking on the malleable application of social science evidence. Since there was no set method to present, interpret, or apply social science research, and because sociological jurisprudence was still underdeveloped in the Supreme Court, the "Social Science Statement" steered towards exhibiting the complexity of social science, describing the psychological harms of segregation, and implementing the results to all members of society. The NAACP was not limiting itself by strictly limiting its use of social science; it wanted the Justices of the Supreme Court to interpret the evidence on their own. But in order to accomplish its goal of showcasing psychological harm, a specific set of social science studies needed to be carefully selected.

The Background of the Social Scientific Research of the Clarks, Chein, and Deutscher

In order to enhance the malleable definition and impact of the "Social Science Statement," a number of different social science studies were cited, including noteworthy studies conducted by Kenneth Clark. Although they were rather controversial in methods and findings, Thurgood Marshall agreed to use Clark's studies as a way to "get this kind [social science] of evidence on the record."[116] To Marshall, it did not matter what kind of social science testing was done, he just wanted it to see it presented in Court and open the subject for interpretation by the Justices. To collect the data for Clark's testimony in *Briggs v. Elliot* – and back up Clark's previously published studies – Marshall, Carter, and Clark traveled to Clarendon County in South Carolina in May 1951 (five months before the outset of the writing of the first draft of the "Social Science Statement") to perform two of Clark's contentious tests on sixteen young black students attending a segregated school.[117]

Born in the Panama Canal Zone and moved to Harlem as a toddler, Clark earned a degree in psychology at Howard University. It was at Howard where he met his wife, Mamie. After meeting Kenneth, Mamie took an interest in psychology and the effects of segregation on black children in the Washington D.C. area. With this type of research, Mamie looked to see if race had any influence on their "self-identity;" Kenneth soon followed into this research topic.[118] At the end of World War II, the Clarks moved to New York City to obtain graduate degrees in psychology and continued their research by creating the Northside Testing and Consolation Center (later renamed to the Northside Center for Child Development).[119] After receiving various

[116] Kluger, 316.
[117] Ibid., 315.
[118] Ibid., 316-7.
[119] Ibid., 317.

grants and funding, the Clarks developed two tests to study segregation and its emotional and psychological impacts on black children: the Doll Test and the Coloring Test. More specifically, with these studies, the Clarks looked to study how segregation influenced "the comparative rate or development of awareness of racial differences, racial self-identification and racial preference in Negro children."[120] In order to examine both the Doll Test and the Coloring Test, the published findings presented in the "Social Science Statement" will be examined and compared to the results of Kenneth Clark's 1951 tests in South Carolina discussed during testimony. Although Clark's testimony was not mentioned to the Supreme Court in the "Social Science Statement," it is critical to acknowledge the findings, as they showed that the results were consistent.

In the chapter "Racial Identification and Preference in Negro Children" published in the 1947 textbook *Readings in Social Psychology*, the Clarks described their findings of the Doll Test. Their subjects contained 256 black children, labeled as having light, medium, and dark skin tones, and aged 3 to 7 years old. In order to examine multiple psychological impacts of segregation, the Clarks divided their experiment into three groups of questions to ask the children: preferences (i.e., "Give me the doll that is a nice color"), racial differences (i.e., "Give me the doll that looks like a white child"), and self-identification (i.e., "Give me the doll that looks like you").[121] Looking at each of these groups, the Clarks aimed to determine if the children recognized a difference between the black and white dolls, which dolls (or skin color) they preferred, and which skin color they considered themselves to possess.

---

[120] Kenneth B. Clark, *Effect of Prejudice and Discrimination on Personality Development*, Fact Finding Report Mid-century White House Conference on Children and Youth, Children's Bureau, Federal Security Agency, 1950, 34.
[121] Kenneth B. Clark and Mamie P. Clark, "Racial Identification and Preference in Negro Children," in *Readings in Social* Psychology, Theodore M. Newcomb and Eugene L. Harley (New York: Henry Holt and Company, 1947): 169.

As explained in the textbook chapter, the Clarks drew a number of significant conclusions from the Doll Test. First, the children knew that the dolls were different based on their skin tones, as over 90% handed the correct doll when asked to give the white doll or to give the black doll. Second, the children in the study understood that a racial difference existed between blacks and whites, leading to the Clarks to conclude that children identified a "'racial' sense."[122] Third, self-identification based on race was impacted, as only 66% of the children "identified themselves with the colored doll" while the other 33% selected the white doll.[123] The Clarks were particularly concerned about this final finding, as all of the children were considered black. However, it was noted that 18% of the tested children were considered light skinned; the Clarks noted that a child under seven years old and considered light skinned may have a shifted perspective of their identification, especially if they had been around other people considered more medium or dark skinned.[124]

The second test, known as the Coloring Test, followed a similar structure to the Doll Test. In their 1950 article "Emotional Factors in Racial Identification and Preference in Negro Children" appearing in the *Journal of Negro Education,* the Clarks explained their findings for the Coloring Test after testing 160 children, ages 5 to 7 years old, again with varying skin types (light, medium, or dark). This time, the Clarks noted which geographic region of the United States the children lived in: 58% of the children from this study were from the South, and the other 42% hailed from the North. Each child was given pieces of paper that contained outlines of everyday objects: "a leaf, an apple, an orange, a mouse, a boy, and a girl."[125] Each outline was

---

[122] Ibid. 170-1.
[123] Ibid.
[124] Ibid. 170.
[125] Kenneth B. Clark and Mamie P. Clark, "Emotional Factors in Racial Identification and Preferences in Negro Children," *The Journal of Negro Education* 19.3 (Summer 1950): 342, *JSTOR*, Online (accessed on 26 March 2018).

drawn exactly the same for viewing by each child, except for the drawings of the boy or girl. Each child was given the opposite gender to color (all of the boys had pictures of girls and all of the girls had pictures of boys). Each child was also given a box of crayons consisting of all the colors that would be expected (blue, green, and so on), but the box also included colors that could be interpreted as skin colors: tan, white, black, and brown.[126]

Each child was tested individually in two parts. First, the child was asked to color the first four objects – the leaf, apple, orange, and mouse – the appropriate color to check the child's "stable relationship of color to object."[127] After this, they moved on to coloring the boy or girl. Similar to the Doll Test, each child was asked to "color this little boy (or girl) the color that you are" and "color her (or him) the color you like little boys (or girls) to be."[128] Based on their results, the Clarks found that most of the black children preferred for the boy or girl to be white – especially in children with dark skin. Notably, the Clarks also found that as the children studied in the Coloring Test were slightly older than the children in the Doll Test, they were less likely to reject their skin color. Nonetheless, the Clarks concluded that overall, when race was mentioned to the children, their attitude towards blacks took a negative turn, resulting in the idea that black children could not "escape realistic self-identification."[129]

The findings of the studies by Kenneth Clark in South Carolina in May 1951 re-affirmed the results of his and Mamie's previous studies. For the Doll Test, Clark tested sixteen black school children between the ages of six and nine years old. Out of those sixteen children, ten of them chose the white doll over the black for their personal preference, eleven students thought

[126] Ibid.
[127] Ibid.
[128] Ibid.
[129] Ibid., 345, 348-9.

that the black doll was "bad," and nine students thought that white doll was "nice." Regarding the Coloring Test, Kenneth Clark specifically recalled the results of one black girl when he was giving his testimony during *Briggs*: the girl, who was considered dark skinned, colored herself (the picture of the little girl) pink and colored the picture of the boy white. Clark mentioned this girl because of her reaction to coloring the boy white. When the white crayon did not show up on the paper, she continued to press harder on the paper, just so some white crayon marks appeared on the paper.[130] Similar to his previous studies, Clark considered this particular result concerning in terms of the children's psychological damage, as he thought it showed signs that black children looked down upon themselves because of their race.

The final significant Clark study cited in the 1952 *Brown* "Social Science Statement" was from the "Fact Finding Report Mid-Century White House Conference on Children and Youth" in 1950. This specific report utilized multiple social science studies from the time period, including research by the Clarks and Max Deutscher and Isidor Chein (their research will be discussed in subsequent paragraphs). Within 200 pages, the "Fact Finding Report" addressed research on race and religion, specifically black and Jewish children. In both demographic groups, its findings claimed that social science indicated harmful psychological effects regarding prejudice and segregation by race and religion.

The "Fact Finding Report" reiterated the Clarks' published findings from the Doll Test and the Coloring Test. But in this particular study, the Clarks, along with other social scientists, determined that black children's perspectives of their race were largely influenced by the larger public society and the social norms. Such everyday occurrences took place at public facilities that were a part of the "larger culture" of society, located outside the family home, and had

[130] Kluger, 330-1.

society implement "racial symbols," including schools, churches, public transit, and recreational facilities.[131] At the time, this finding was rather notable, as it was widely assumed that most of the influence comes from the child's parents and their home life and not public places of learning and recreation. With these findings, and in conjunction with the Doll and Coloring Tests, the Clarks acknowledged that black children who experienced segregation were more likely to reject their own race, particularly once they entered segregated schooling.[132] As a result, they were at risk of developing feelings of inferiority and becoming humiliated by the color of their skin.

Like the "Social Science Statement," the Clarks' studies did not provide many concrete definitions for a number of terms, including psychological harm. In a way, the missing definition proved significant for the "Social Science Statement." Without a set definition of psychological harm, the NAACP and fellow social scientists indicated a number of harms, such as feelings of inferiority, low self-esteem, and poor academic achievement. In addition, the missing definitions allowed Carter and Marshall to use the Clarks' studies to relate the findings to societal harms and the endless cycle of poverty in the black community. With the Clarks' studies, the NAACP possessed a way to display the negative connotations of segregation among the black community.

Another notable social science article prominent in the "Social Science Statement" was Max Deutscher and Isidor Chein's 1948 survey entitled "The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion." Unlike the Clarks, Deutscher and Chein did not test children for feelings of inferiority due to segregation. Rather, they focused on surveying professional social scientists about the topic. Their survey considered two matters: whether

---

[131] Clark, *Effects of Prejudice on Personality Development*, 47-8.
[132] Ibid., 48.

social science proved that "enforced segregation d[id] or d[id] not have detrimental effects" and exploring segregation "when equal facilities [we]re provided for the segregated groups."[133] In other words, along with analyzing if any psychological harms existed because of segregation, Deutscher and Chein surveyed peers as to whether these psychological impacts also occurred when both blacks and whites were truly *separate but equal*.

To conduct the survey, the duo polled 849 anthropologists, psychologists, and sociologists (they received 517 surveys back) and asked them "for opinions about the psychological effect of enforced segregation, both on the group which enforces segregation and on the group which is segregated."[134] Once the surveys were returned, Deutscher and Chein divided the responses into three groups based on the responder's stated specialty in social science (anthropology, psychology, and sociology), with the sociology group further divided into two groups based on membership status in the American Sociological Society and if the sociologist had any publications regarding race relations. The experts answered their questions by checking off statements to affirm, deny, or indicate no opinion on segregation causing psychological harm and if they possessed research – their own or belonging to someone else – that contributed to their answer.[135]

To Deutscher and Chein, the results of the survey were unsurprising. The first question asked if segregation caused harmful psychological effects, where over 90% of the social scientists responded that they observed psychological damage. Regarding the second question – if the psychological harms impacted both the segregated and the segregator – 82.8% of

---

[133] Max Deutscher and Isidor Chein, "The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion," *Journal of Psychology* 26 (January 1, 1948): 260, *ProQuest*, Online (accessed on 26 March 2018).
[134] Ibid., 259-262.
[135] Ibid., 261-2.

respondents believed that there were harmful psychological effects on both groups. In other words, a large majority of the sample believed that the segregators also experienced psychological damage; it was not restricted only to the segregated group. With these responses, Deutscher and Chein were confident that most social science experts believed that both the segregated and the segregators experienced psychological damage from the action itself.[136]

The third question – how the experts developed their opinion on the matter – was answered definitively. The poll provided four options: the expert's own research, other expert's research, their own professional experience, or other expert's professional experience. Each respondent picked as many answers that applied to them. Out of the responses, 14% checked off all four, 24% checked three of the four, and 28.8% checked two of the four. With this information, the most common response that experts indicated was "own professional experience" (66.5%).[137] In other words, over two-thirds of the polled experts observed psychological damage in the segregated group and/or the segregators within their own practice or research.

Like the Clarks' studies, the Deutscher and Chein survey continued with the pattern of missing definitions for social science and psychological harm. Deutscher and Chein never provided the experts a definition for social science. As a result, the polled experts created their own definitions of social science in the final comments section at the end of the survey. This allowed Deutscher and Chein to obtain a variety of definitions and insights on what social science and psychological harms of segregation meant to other researchers. With this

[136] Ibid., 261, 265, 268.
[137] Ibid., 271.

information, the NAACP effectively used the survey to argue that segregation led to psychological harms for both the segregator and the segregated group.

The most intriguing conclusion that emerged from the cited social science research in the "Social Science Statement" was that two groups of people experienced the detrimental psychological harms of segregation; it was not just limited to the segregated group. Although not expressly defined in the *Brown* "Social Science Statement," based on the context of the case, it was assumed that the segregated group was black and the segregators were white. By showing that white children were damaged just as much as black children by segregated schools, the NAACP's lawyers emphasized the position that both groups would benefit from desegregated education. This strategy was most likely incorporated in order to get the white public's – and the Justices' – attention; if white children are psychologically damaged because of segregated education, would the white community continue to practice segregation?

The Justices and the Opinion in *Brown*

On May 17, 1954, the Supreme Court announced its decision in *Brown*. In a brief, unanimous Opinion written by Chief Justice Earl Warren, the Supreme Court decided that "the doctrine of 'separate but equal' ha[d] no place" in any part of the United States, including the education system.[138] Although the Supreme Court ruled in favor of desegregation, according to historian Daryl Michael Scott, there was little evidence that any of the Justices were swayed by

[138] Chief Justice Earl Warren, Opinion of the Court, Brown v. Board of Education, 347 U.S. 483 (1954), Cornell Law School, Online (accessed on 12 March 2018).

the social science evidence and the psychological harm argument.[139] Since Warren consistently circled back to deeming segregation unconstitutional under both the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment, this statement could have merit. With the mentions of the Fourteenth Amendment, the Court seemed to base its opinion primarily on the text of the Constitution and did not heavily rely on social science.

But this assumption was not completely accurate. In remarks made by scholars for the NAACP, the Justices were willing to overthrow *Plessy* and end segregation after the first round of arguments in 1952, but they were conflicted with the constitutional reasons of such a decision, namely with clear understandings of the Fourteenth Amendment. For one, the original intent and the text of the Fourteenth Amendment were unclear to many of the Justices. When it came to determining if the Fourteenth Amendment prohibited racially segregated schools, the original intent and the text of the Amendment failed to provide a concrete answer for the Justices, Carter and Marshall, and even the social scientists.[140]

Additionally, precedent did not seem to do the Warren Court any favors, as previous cases, such as *Plessy v. Ferguson*, complicated the decision. In the end, each of these traditional routes of jurisprudence pointed towards affirming the constitutionality of segregation: should the Justices follow their training – and possibly uphold *Plessy* because of the lack of clear evidence otherwise – or should they consider what is best for society?

When original intent, textual analysis, and precedent failed to provide a clear decision in *Brown*, social science may have been the solidifying evidence the Justices needed. To mark the

---

[139] Daryl Michael Scott, "Justifying Equality: Damage Imagery, *Brown v. Board of Education*, and the American Creed," *The Journal of Educational Foundations* 10.3 (Summer 1996): 56-7, *ProQuest*, Online (accessed on 23 October 2017).
[140] Paul L. Rosen, *The Supreme Court and Social Science* (Urbana: University of Illinois Press, 1972): 144-5.

appropriate use of social science research, one of the Chief Justice's clerks, Earl Pollock, drafted a bold claim opposing laws and precedent that reinforced segregation: "Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson,* this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected."[141] For the first time, the Supreme Court acknowledged the active role of social science research regarding the harmful psychological effects of segregation.

Unlike the unanimous Opinion in *McLaurin*, the *Brown* Opinion explicitly acknowledged a number of the social science studies mentioned in the "Social Science Statement." Warren used the social science research to explain how segregation resulted in feelings of inferiority among blacks. In return, Warren explained that these feelings led to black students receiving a lower quality education than their white peers, which violated the *separate but equal* clause in *Plessy v. Ferguson*. The seven studies that the Court cited – including the three Clark studies and Deutscher and Chein's survey of social scientists that were previously analyzed – are housed in Footnote 11.[142] With these citations, Footnote 11, and Pollock's statement on the usage of social science, it was clear that the Supreme Court utilized a significant portion of the "Social Science Statement" to find segregation unconstitutional and allowed the Justices to come to a unanimous Opinion.

Unknown to many, the unanimous Opinion in 1954 was the result of a second round of arguments. The first time that *Brown* reached the Supreme Court was in 1952, when the "Social Science Statement" was presented to the Vinson Court. After hearing the first round of

[141] Bernard Schwartz, *A History of the Supreme Court* (New York: Oxford University Press, 1993): 302.
[142] Chief Justice Earl Warren, Opinion of the Court, Brown v. Board of Education, 347 U.S. 483 (1954).

arguments, the Justices first considered their votes in December 1952 and would have most likely ended in a 5-4 decision to overthrow *Plessy v. Ferguson*.

Some Justices, particularly Felix Frankfurter, found this split decision problematic. Even though the Court could have ended segregation with the December 1952 vote, a split decision would have been detrimental to the cause. To the public, if a fractured Supreme Court found that segregation was unconstitutional – complete with dissenting and concurring opinions – this may well have brought on more resistance to integrating society. Further, a split decision had the possibility to incite violent resistance and ultimately hinder the intentions to legally end segregation. Finally, with the confusion surrounding the original intent of the Fourteenth Amendment, re-argument would allow the Justices to further examine the Amendment and buy time to develop the Court's jurisprudence. After considering the reasons for additional arguments, and persuasion from Frankfurter, the Justices scheduled re-arguments for *Brown* for December 1953. The push for re-argument turned out to be a critical factor, as Vinson's sudden death in September 1953 allowed Warren to be named Chief Justice and help shift the Court towards the unanimous Opinion.[143]

One way to examine the steps towards the unanimous Opinion is to categorize the eight Associate Justices under the Vinson and Warren Courts and how each Justice eventually came to the conclusion to end segregation. The first group was made up of the Justices who would have voted for desegregation in both 1952 and 1954: William Douglas, Sherman Minton, Hugo Black, and Harold Burton. The second group consisted of the Justices who would have considered upholding *Plessy* in 1952 but were persuaded to side with the Majority in 1954: Robert Jackson,

[143] Howard Ball and Philip J. Cooper, *Of Power and Right: Hugo Black, William O. Douglas, and America's Constitutional Revolution*, (New York: Oxford University Press, 1992): 176-7.

Tom Clark, and Stanley Reed. This latter group of Justices did not necessarily believe that segregation was constitutional, but because of the confusion regarding the interpretation of the Fourteenth Amendment, they struggled to find a traditional constitutional reason to end the practice. Finally, Felix Frankfurter was difficult to categorize due to his struggle to determine the proper jurisprudence to use in the decision. In the end, out of the Associate Justices, Frankfurter may have been the most persuaded by the incorporation of sociological jurisprudence. The categorization of the eight Associate Justices was vital, especially with the change in Chief Justice throughout the *Brown* litigation.

The first group of Justices (Douglas, Minton, Black, and Burton) would have voted to end segregation under specific passages and interpretations of the Constitution. Douglas, Minton, and Black all looked towards the Fourteenth Amendment. Douglas and Minton found that the text of the Equal Protection Clause prevented an individual from being prescribed by race in terms of public education. Meanwhile, Black believed that the original intent of the Fourteenth Amendment was to "prohibit segregation."[144] Burton did not agree with segregation, but instead of relying solely on the Fourteenth Amendment for his jurisprudence, he turned more towards the ideas of a living Constitution. As he expressed in 1950 with *McLaurin*, the laws and the Constitution should evolve with society. Burton claimed that *separate but equal* may have worked when *Plessy* was decided in 1896 but was no longer applicable to the 1950s.[145] Burton's stance was agreed upon with Pollock's statement in the *Brown* Opinion; over the six decades between *Plessy* and *Brown*, society – and social science – developed and was enhanced with research. Therefore, if society and social science evolved, the Constitution should follow suit.

[144] Scott, 57.
[145] Ibid.

Excluding Chief Justice Vinson, there were three additional Justices who may have considered upholding the decision in *Plessy v. Ferguson* in 1952 due to conflicting interpretations of the Fourteenth Amendment: Robert Jackson, Tom Clark, and Stanley Reed. Unlike the previous four Justices, each of these Justices struggled to grapple with the unclear precedent, original intent, and the text of the Constitution throughout *Brown.* This was a dilemma that Jackson particularly fought with. Throughout both *Brown* arguments, he felt torn between following his training as a lawyer and Supreme Court Justice and doing what was right for society. With this situation, Jackson had his two law clerks – Donald Cronson and future Chief Justice William Rehnquist – prepare a memo to possibly morph into a Concurring Opinion during the conference in December 1952. Although Jackson's instructions regarding how to write the memos were unclear, Rehnquist asserted to write his as if it reflected Jackson's views on segregation. In his version of the memo, Rehnquist explained that *Plessy v. Ferguson* "was right and should be re-affirmed" if basing the *Brown* decision on precedent.[146] Although Jackson never claimed that this was his view, it is plausible that under precedent, *Plessy* could be upheld as constitutional. By the time *Brown* was re-argued in December 1953, Jackson seemed to shift away from agreeing with any views regarding precedent for upholding segregation.

According to Scott, Jackson was one of the Justices to outright reject the evidence, explaining that psychological and subjective findings should not be intertwined with "'the concept of equal protection of the law.'"[147] To Jackson, subjective evidence was not concrete enough to become part of the law. However, Jackson appeared to agree with the unanimous decision after considering what was best for society, possibly in regards to the social science

[146] Kluger, 608-9.
[147] Scott, 57.

evidence. But in order to agree with Warren's Opinion, he requested that the Opinion be narrowly tailored: Jackson believed that the Court was responsible for deeming segregation unconstitutional, but it could not define how desegregation would be implemented. Without this requirement, Jackson may have followed up with the memos Cronson and Rehnquist drafted and turned one of them into a concurrence. Jackson, who was in the hospital recovering from a heart attack when Warren delivered a copy of the *Brown* Opinion for him to read, was reluctant to overthrow *Plessy* solely using the social science evidence. According to his clerk for the 1954 term, Barrett Prettyman (who actually read the drafted Opinion and reported back to Jackson), the simplicity of the Opinion, the toned-down reliance on the Fourteenth Amendment, and the rhetoric that did not fault anyone for enforcing segregation encouraged Jackson to sign on to the Opinion. Even though he was still in the recovery period from his heart attack, Jackson made sure to attend Court when the *Brown* Opinion was delivered. This would be one of Jackson's last cases before his death in October 1954.[148]

Tom Clark seemed to change his mind on *Brown* during the transition of Chief Justices. When Vinson was Chief Justice, Clark typically agreed with most of his views and opinions. Prior to his death, Vinson believed that the Fourteenth Amendment only addressed the equality of schools; as long as schools were providing the same education, then *separate but equal* could be upheld. By the time the Justices discussed the decision with Warren, Clark shifted to the belief that one of the intentions of the Fourteenth Amendment was to cease segregation, yet none of the Justices seemed to agree with this logic. Clark was, in the end, on board to strike down *separate but equal*, but, like Jackson, he requested that the Opinion not spell out how to achieve segregation. Rather, he wanted schools and states to come up with the desegregation plan that

[148] Kluger, 607-8, 611, 684, 699-701, 703-4.

would be the most effective for them.[149] In other words, Clark would agree to side with the desegregation verdict as long as the Court did not define how to impose desegregation.

The final Justice to sign on to the unanimous Opinion was Stanley Reed. Reed's views on segregation were similar to Burton's, as he thought that segregation was a dying social norm and the public simply had to wait it out. Despite this view, he did not believe that it was the Court's responsibility to end segregation and strongly considered drafting a dissent. But when Reed was the last Justice to sign on to Warren's Opinion, his decision came down to the significance of a unanimous Court. No matter how Reed voted, the *Brown* decision was going to end segregation. Because he was from the South, Reed knew that as the lone dissent in *Brown* to uphold *Plessy*, it would give the southern white population a reason to resist the Opinion. In order to make the decision worthwhile and have the nation unite as one group to move forward with desegregation, Reed knew he had to sign onto the Opinion.[150]

Felix Frankfurter may have been the most conflicted justice regarding the *Brown* decision in both rounds of arguments. Yet, other than Warren, he may have been the Justice to be most persuaded by the "Social Science Statement" and the resulting use of sociological jurisprudence. Although he believed in overthrowing *Plessy* and ending segregation, he knew the risks of such drastic actions. Like Warren, Frankfurter pushed for the unanimous Opinion, even when Vinson was Chief Justice. He was aware what a 5-4 decision would look like if the Court voted on *Brown* in 1952 and was the one to push for the re-arguments to allow time for additional interpretation of the Fourteenth Amendment. Even though Frankfurter wanted to overthrow *Plessy* and segregation, there was no precedent for him to look to. In lieu of precedent,

[149] Ibid., 268, 614, 685.; Scott 57, 59.
[150] Kluger, 702.

Frankfurter was looking for evidence that had more "'reserve and austerity'" and "remained true to the law."[151] Initially, with this criteria, Frankfurter was looking for a reason to end segregation using the original intent of the Fourteenth Amendment.

In order to determine the constitutionality of segregation in 1952, Frankfurter attempted to observe the original intent of the Constitution and the Fourteenth Amendment, which, like Jackson, created a conflict between his jurisprudence and social science. On one hand, Frankfurter seemed to applaud the use of social science in *Brown,* claiming that it was "germane of the process of judicial interpretation."[152] In addition, he also believed that social science research intended to find facts and contained objectivity. However, Frankfurter did not agree with evidence regarding "race that smacked of moral preaching," meaning arguments that simply orated that segregation was wrong, without providing concrete evidence, was unconvincing.[153] Following the second round of arguments, Carter and Marshall's use of social science evidence convinced Frankfurter to side with the unanimous Opinion. With the "Social Science Statement," the NAACP satisfied Frankfurter's desire for tangible evidence to explain that segregation was wrong. With the help of social science evidence, it looked like most of the Justices found some sort of jurisprudence to side with that found that segregation was wrong.

But what about the freshly minted Chief Justice? Earl Warren was most likely swayed by the "Social Science Statement" to cite the evidence in the Opinion. Warren believed that *Plessy* could not be upheld unless blacks were truly inferior to their white counterparts, which allowed him to focus heavily on black schools in terms of the Equal Protection Clause. Under the Equal Protection Clause and *separate but equal,* segregated schools for black students were expected to

[151] Kluger, 684.; Ball and Cooper, 175-6.; Scott, 57-8.
[152] Rosen, 141.
[153] Scott, 57.

provide the same high quality, substantial public education. The Court found that this was not the case. Instead, African Americans were receiving a second-rate education in terms of resources, amenities, and opportunities. As explained in the "Social Science Statement," these children developed feelings of inferiority that they would carry with them through their adult lives, all because of their skin color.[154] Warren's Opinion effectively utilized the social science evidence in conjunction with the Constitution and sociological jurisprudence.

To start the Opinion, Chief Justice Warren discussed some critical social evolutions in the United States over the last century: the adoption of the Fourteenth Amendment in 1868, *Plessy v. Ferguson* and the establishment of *separate but equal*, and recent Supreme Court decisions, including *McLaurin v. Oklahoma State Regents*. Warren also discussed the changes in public education, especially with African Americans. In the latter half of the nineteenth century, most white children were educated by private schools, while "education of Negroes was almost nonexistent" and even "forbidden by law in some states."[155] But over time, education for blacks evolved, and with the introduction of public schools with the goal of creating "the very foundation of good citizenship," *separate but equal* was supposed to take on a whole new meaning.[156] But unlike public education, *separate but equal* refused to change over time. Warren took this into consideration; he explained that the members of the Court could not reverse the past, but they could look at the importance of education and "consider public education in the light of its full development and its present place in American life."[157]

---

[154] Rosen, 150-4.
[155] Chief Justice Earl Warren, Opinion of the Court, Brown v. Board of Education, 347 U.S. 483 (1954).
[156] Ibid.
[157] Ibid.; Scott 59-60.

As stated in the "Social Science Statement," even before black children entered school, they already understood their inferior status due to their race. As a result, they entered school already at a disadvantage to their white counterparts. Warren also found that separating black children into lower-quality schools not only re-affirmed their inferiority to white children, but it also led to a disadvantage in their education in terms of the harmful psychological effects of segregation.[158] In accordance with the "Social Science Statement," by attending the poorly-funded segregated school, Linda Brown was receiving a low-quality education that made her feel inferior as a United States citizen and negatively impacted her socially and psychologically. Warren's related arguments explained why the Brown family took the chance to enroll her into a white-only school when they thought the chance had arisen. If black children were receiving an inferior quality of education compared to white children, how would that effect their quality of life – and United States society – in the future?

The Chief Justice's references to the "Social Science Statement" and its presumed findings takes up about two-thirds of a paragraph in the middle of the *Brown* Opinion. By citing several social science studies in Footnote 11, Chief Justice Warren clarified that segregating children in public schools because of their race created "a feeling of inferiority…that may affect their hearts and minds in a way unlikely ever to be done."[159] Again, that inferiority impacted black children's motivation in school as well as their educational and mental development. With that damage rooting itself so early on in one's life, they may never be able to overcome the consequences. This followed Warren's belief that public education became more important to democracy over the years: if a portion of the population was receiving a poor-quality education,

[158] Appendix to Appellants' Briefs, *Brown v. Board of Education of Topeka,* 347 U.S. 483, 6-8.; G. Edward White, *Earl Warren: A Public Life* (Oxford: Oxford University Press, 1982), 123, 126.
[159] Chief Justice Earl Warren, Opinion of the Court, Brown v. Board of Education, 347 U.S. 483 (1954).

the next generation of United States citizens would struggle to contribute to the workforce, economy, and society as a whole.[160] Based on the evidence presented in the "Social Science Statement," the consequences of an inadequate education for blacks formed an unbreakable circle of poverty that would continue for generations. Segregation not only impacted the child's education; it impacted their entire future.

With this information, the "Social Science Statement" contributed a significant amount of evidence to persuade the Supreme Court to end the practice of segregation. For one, it assisted in helping the Justices wrestle with the interpretation of the Fourteenth Amendment and successfully incorporated sociological jurisprudence. The *Brown* Opinion's use of Footnote 11 and Warren's argument that "the doctrine of separate-but-equal rested upon the concept of inferiority of the black race" showed that the "Social Science Statement" was an effective amicus brief.[161] Further, due to the under-formed definition of social science, there was no set method to interpret the evidence. Although this initially caused some ripples among some of the Justices' decision-making, it allowed Warren to discuss the psychological harms of segregation in a way that did not fault anyone nor instructed how to implement integration. With this fluidity, the Justices were able to sign a unanimous Opinion and end segregation.

But despite the findings, Warren missed out in emphasizing one feature of the "Social Science Statement": the negative impact of segregation on the white community. As the "Statement" and a number of the cited studies explained, white Americans also suffered from racially separated schools, ranging anywhere from re-affirming their superior status to not learning how to work with different people. Warren made no mentions of this argument. Rather,

[160] Ibid.; White, 126.
[161] Kluger, 682.

he solely focused on the psychological harms the black community faced with segregation. Without this reference, the Supreme Court distinguished that segregating blacks on the basis of race in 1954 was unconstitutional.

In the end, segregation created two distinct American societies based on race: a white, superior society and a black, inferior society. With the inclusion of Footnote 11, social science displayed the negative connotations of being black in the United States. But with this acknowledgment came critics and skeptics questioning the relevance of social science and if its justifiable in court. These controversial studies led to much discussion and an interest in deciding if social science really contributed to the Court's Opinion in *Brown*.

Criticisms of the *Brown* Social Science

Once the Warren Court made its decision in *Brown*, criticisms of the "Social Science Statement" – and the research it cited – appeared in law journals across the country over the next half-dozen or more years. A number of law professors, philosophers, and psychologists produced responses to the social scientists aiming to discredit their research and its application in *Brown*, particularly the work of the Clarks and Deutscher and Chein. To narrow down the arguments, three different critics and their stance on one aspect of the "Social Science Statement" will be analyzed: A. James Gregor (in 1963) sharply criticized the entirety of the "Social Science Statement"; Ernest van den Haag (in 1961) noted the flaws of the Clarks' research; and Edmond Cahn (in 1955) commented on the shortcomings of Deutscher's and Chein's research. Specifically, for the Clarks' studies, Gregor and van den Haag argued that the findings were contradicting, as they showed that black students attending schools with unwelcoming white

students could be just as psychologically detrimental as attending segregated schools.[162] Even though each critic focused on a specific aspect of the *Brown* social science research, they all touched upon one common theme: the researchers' (and NAACP lawyers') lack of focus and specificity in defining key terms such as "psychological damage." Like the absent definition of social science, this tactic could be interpreted in one of two ways: without these definitions, the NAACP lawyers, and the Court, could decipher those terms however they saw fit. To the lawyers and researchers, this could have been beneficial; but to the critics, this provided a reason to discredit the social science presented and identified in *Brown*.

One critic of social science research, who specifically looked at the "Social Science Statement," was A. James Gregor, Associate Professor of Social and Political Philosophy at the University of Hawaii. In his 1963 article "The Law, Social Science, and School Segregation: An Assessment," he argued that the "Social Science Statement" used in *Brown* was not ideal for this particular case because of its claim that desegregation would solve all of the problems. To start, Gregor claimed that any social science submitted to the Court must meet three requirements: it had to be pertinent to the particular case, follow the scientific method, and be precisely interpreted. According to Gregor, because social science was so fluid in meaning and interpretation, *Brown*'s "Social Science Statement" did not meet any of these requirements.[163]

One of the main reasons Gregor came to this conclusion was both the imprecision of the language and methodology of the research presented in the "Statement," particularly how it did not single out a "critical variable."[164] Without this variable, how could the social scientists

---

[162] A. James Gregor, "The Law, Social Science, and School Segregation: An Assessment," *Western Reserve Law Review* 14.621 (1963): 626-33, *HeinOnline*, Online (accessed on 26 March 2018).; Ernest Van den Haag, "Social Science Testimony in the Desegregation Cases – A Reply to Professor Kenneth Clark," *Villanova Law Review* 6 (Fall 1960): 70-1, *HeinOnline*, Online (accessed on 23 October 2017).
[163] Ibid., 622-3.
[164] Ibid., 623.

determine the specific characteristic that made separating schoolchildren by race so damaging? The "Statement" did not fully develop, nor prove, this assertion. In addition, the NAACP lawyers did not define a number of descriptive terms in the "Statement," including segregation, prejudice, and discrimination. Rather, each of these terms were used conjointly with each other, almost as if they were one-in-the-same. However, according to Gregor, this created confusion and questions to relevancy, as it was difficult to determine the root of the psychological damage and what it actually meant. Without a proper definition of these critical variables, a number of outside factors could impact a black child's psychological damage, such as crime rates and home and family life. A whole host of factors other than race could make a child feel inferior in school. Thus, Gregor explained, this imprecision in establishing working definitions made much of the "Social Science Statement" largely irrelevant in proving if school segregation was the underlying cause of psychological damage.[165]

Gregor not only focused on the language of the "Social Science Statement" in order to discredit it. He also examined four other areas of the "Statement" that made it look like a defense for segregation. The first two areas – positive effects and negative effects – go hand in hand. Gregor argued that if segregation in schools led to black children feeling humiliated and having a sense of inferiority, as Clark claimed, then that problem should resolve itself once schools were integrated. However, there was no evidence of that finding. Further, even with integration, Gregor cited that black children would "be a minority member of a white community."[166] As a result, black children accepted the "majority (white) preference norms" and reject their own norms, simply because they were outnumbered. To Gregor, the psychological harm argument for

[165] Ibid., 623-4.
[166] Ibid., 629.

integration was flawed: there was no evidence that integrating schools would solve the problems of black inferiority.[167] Rather, integration in schools may cause more problems than it would solve, as it would continue to hinder black children's ability to create "meaningful interpersonal relations."[168]

The final two areas that Gregor examined – the psychodynamic impairments and the psychometric factors – provided explanations for why integration would not solve the inferiority problems. The impairments followed along with the positive and negative effects stated above: because black children would be outnumbered in an integrated group, their views would be overshadowed by their white peers' views, resulting in a higher chance of black children rejecting their own race. Further, the psychometric factors took academics into account. Gregor cited that black children "perform[ed] on a significantly lower level than white children," and when a black child saw this in a desegregated school, feelings of inferiority emerge.[169] By critiquing the "Social Science Statement," Gregor negated that integration would be the end-all-be-all solution to feelings of inferiority among black schoolchildren and brought about possibly worsened harmful effects instead.

Other academics also looked at the "Statement" and characterized the social science research as illogical and lacking in scientific rigor. One such critic was Ernest Van den Haag in his 1961 article "Social Science Testimony in the Desegregation Cases – A Reply to Professor Kenneth Clark." Van den Haag, a professor of Social Philosophy at New York University, zeroed in on Clark's Doll Test using some of his own data and rebuttals to criticize his research and conclusions. But even though the Supreme Court did not directly state that psychological

[167] Ibid., 626-9.
[168] Ibid., 626-31.
[169] Ibid., 629-33.

damage was the reason to end segregation, van den Haag claimed that the Opinion was influenced by the research and blamed Clark for leading the Court in that direction.

To explain his reasoning, van den Haag began by dispelling Clark's claims that integration would solve all of the problems regarding prejudice. Van den Haag believed that "contact produces as much as it reduces prejudice."[170] Like Gregor, he did not believe that having black and white children in school together would automatically squash all forms of prejudice. Instead, he predicted that black children would experience more humiliation, as they will be forced to attend school with prejudiced white children each day. In the end, this would be more psychologically harmful to black students than attending segregated schools. Additionally, van den Haag believed that the Court decided that segregation was "more humiliating" than integration, but they provided no evidence to back this claim.[171]

Another implication of the Court's desire to desegregate the United States led to the idea of compulsory congregation. Van den Haag described compulsory congregation as forced desegregation on everyone under the law, even on those who may not want be part of the desegregated society. Could there be any dangers behind this? Van den Haag explained that when the Court "found segregation 'inherently unequal' because of its humiliating connotations," it was expecting desegregation to level all playing fields between blacks and whites, thereby making both groups equal to one another.[172] Again, van den Haag was not convinced that full-thrusted desegregation would be the solution, especially if certain groups resisted the efforts.[173] In a way, compulsory congregation on whites was viewed in the same light

[170] Van den Haag, 71.
[171] Ibid., 72.
[172] Ibid., 73.
[173] Ibid.

as compulsory segregation on blacks: blacks did not ask to be segregated and fought to end it. With this concept in mind, would whites fight against the desegregation that they did not ask to be included in?

Next, van den Haag examined some of the flaws with Clark's studies. Similar to Gregor's argument, the most salient theme van den Haag drew from Clark and the "Social Science Statement" was repeated inconsistencies, ranging anywhere from the lack of definitions to different statements made in Court than what was found in the studies. As Gregor argued, van den Haag similarly highlighted that the most notable inconsistency found in the "Statement" was how Clarks' studies failed to prove that school segregation was the root cause of psychological damage among black children. Instead, according to van den Haag, Clark's Doll Test data showed that segregation was less psychologically damaging among black children than desegregation. Because of these inconsistencies, van den Haag concluded that "Professor Clark misled the courts" with his research.[174] With this critique in mind, it seemed as though the NAACP lawyers failed to solve the core problem of the "Social Science Statement": identifying why school segregation was more damaging than the rest of segregation throughout society.

Overall, van den Haag did not support Clark and his work for the "Social Science Statement." One final reason for this conclusion was that van den Haag believed that the Clarks and the NAACP ignored "the effects on Negro children of going to school with hostile whites" (especially with compulsory congregation) and provided no plan of action on how to implement desegregation.[175] This claim has some credible basis to it. The NAACP's "Social Science Statement" did not provide a plan of action on how to reverse black children's sense of

[174] Ibid., 76-7.
[175] Ibid., 71.

inferiority brought on by segregation; it simply stated that it existed. But at the same time, fixing the problem was not up to the NAACP and its lawyers at the time. The goal for both groups was to simply get the issue recognized.

Edmond Cahn was another academic to write a noteworthy critique of how social science was used in *Brown*. As a law professor at New York University, Cahn directed much of his criticisms towards two aspects: Deutscher's and Chein's survey of professionals deciding if school segregation led to "detrimental psychological damage" and a closer consideration if the research in *Brown* was truly scientific. In addition, Cahn's criticisms linked back to Gunnar Myrdal's ideas outlined in *An American Dilemma*, particularly with Myrdal's call for social scientists to become social engineers.

One issue of focus to Cahn was why social psychology differed from other expert testimonies in court, such as the medical field. He explained that because psychological research was still fairly new in its usage in the legal world and based on theory and presentation, social science had a chance of being interpreted in several ways. Unlike other fields of study (say, medicine), there was not a set method to study and interpret and confirm the findings from social science. As interpreted without a concrete definition, it was true that social science varied in interpretation, research methods, and meaning. Even though some found this characteristic beneficial to their arguments, Cahn pointed out that social psychologists were more likely to have some bias and follow too closely along with the public's influence, resulting in "compromise[s]" when concluding their findings in order to get the public's approval.[176] Like

[176] Edmond Chan, "Jurisprudence," *1955 Annual Survey of American Law* no. Part Five (1955): 656-7, *HeinOnline*, Online (accessed on 22 April 2018).

Gunnar Myrdal, Cahn believed that these biases altered the interpretation of social science in race relations.

Similar to van den Haag, Cahn addressed the issue of language and definitions in the "Social Science Statement" and the cited research. But rather than focusing solely on the Clarks' Doll and Coloring Tests, Cahn discussed the survey of experts conducted by Deutscher and Chein to back up his broader claim that social science research was simply based on opinions rather than the appropriate scientific methods and practices. To strengthen this point, Cahn brought in Chein's testimony from the 1955 *Girard College* case. Like his study that was used in *Brown*, the side calling for an end to restrictive racial covenants pertinent to *Girard College* attempted to use Chein's research to show that white boys enrolled at a private school and orphanage in Philadelphia could enhance their education with the enrollment of black boys. The judge did not side with Chein's reasoning, a decision that even Cahn considered "erroneous" in terms of excluding Chein's research.[177]

The confusion in defining terms became apparent with the *Girard College* case. Deutscher and Chein asked experts if there were signs of "detrimental psychological effect on the group which enforces segregation," yet they did not specify what either phrase meant.[178] In both *Brown* and *Girard College*, it was assumed that whites were the ones enforcing segregation on blacks, resulting in the idea that white children also suffer from segregating themselves in their schools. Cahn saw this as a problem; assumptions were not facts. They were simply implied and interpreted on a case-by-case situation. No one could confirm through facts and research conducted by the traditional scientific method if whites were the sole group that enforced

[177] Ibid., 660-1.
[178] Ibid., 662.

segregation. To Cahn, these assumptions were biased, influenced by the public, and jeopardized the ability of social science research to be conducted in a scientific manner. In the end, there was simply no scientific way to prove the assumptions.

Many social scientists agreed with Cahn's argument. In order to be a true social scientist, one must pledge their "first allegiance to science and only secondary allegiance to a particular social policy."[179] In contrast to Myrdal's argument that biases were the result of absent definitions of social science and the laissez-faire attitude of social scientists, others argued that social scientists becoming advocates for change created biases towards social change, as social scientists seemed to lose objectivity and became partial to advocacy.[180] If social science experts began to focus more on the impacts of their research, rather than just their findings, Cahn and other critics believed that the social science community would serve their liberal cause to exhibit only the benefits of desegregation and overstep their boundaries in the field.

Cahn also criticized the way social science was handled in the Courts during the *Brown* case, particularly by the lawyers and Justices. Throughout their study and considerations, the type of psychological damage was not accurately specified in any of the questions, datasets, or conclusions: were Deutscher and Chein looking at self-identity like the Clarks, or were they looking at motivation to learn, or were they looking at the attitudes of black and white children towards one another? It was not until the comments section when some social scientists specified the damages, including anything from "self-esteem…feelings on inferiority and personal insecurity" to frustration and guilt.[181] By leaving the definition of "psychological damage" so vague and imprecise, two different lines of arguments emerged: one that enhanced the NAACP's

[179] Jackson, 173.
[180] Ibid., 172.
[181] Deutscher and Chein, 272-3.

argument, and another that discredited the social science aspect of the argument. As a benefit to the NAACP, the respondents – whether that be the Justices, lawyers, or social scientists – could form their own definitions of psychological damage and other terms and, hopefully, come to the conclusion that segregation led to many different avenues of psychological damage. In a way, this benefitted the NAACP's argument, as the NAACP lawyers had the option to pull from a variety of damages caused by segregation and twist it into evidence that fit their argument. But on the other end of the spectrum, the lack of definitions gave critics the chance to discredit the social science in *Brown*.

Final Remarks

Social science was a complex tactic for the NAACP to incorporate in *Brown*, especially with an absence of a firm definition. Even though the strategy provided the lawyers and social scientists an open field of application to desegregation, the interpretation of such evidence led to redefinitions of constitutional jurisprudence and the role of the social scientist. Specifically, Cahn's argument echoed a number of conflicts that these parties were grappling with: how should social science – and their researchers – be used in the legal system? Some people, like Robert Carter and Thurgood Marshall, were open to sociological interpretation. Others, like Robert Jackson and Felix Frankfurter, needed to re-direct their law training that would incorporate social science.

Although some made peace with the new ways of social science and the law working together, Kenneth Clark struggled to understand his role in *Brown*, even almost two decades after the Court's decision. While working on the "Social Science Statement," Clark expressed his

eagerness to shift from a social scientist to a social engineer. It was almost like he accepted this new role and was willing to usher social science into a new perspective. But in a statement in 1971, Clark was still conflicted; did he remain a true social scientist by following his training and research presentation, or was he an advocate for social change while working with Carter and Marshall?[182]

In the end, social science did not lose its credibility, nor did it restrain the efforts of the NAACP. Instead, social science opened up new doors for both the Supreme Court and social scientists. When traditional interpretations of the Constitution were muddled, the Justices could turn to the psychological harms of segregation to determine its constitutionality, thereby adding a new line of sociological jurisprudence that would be backed by precedent. In addition, social scientists added advocate for change to their training. Thanks to the absence of strict definitions, social scientists were not restricted to siding with their work or siding with social change. Social scientists incorporated their training by "limiting claims, issuing caveats, [and] distinguishing interpretations from results" in the Supreme Court, which allowed them to provide a strong argument for the NAACP.[183]

The inclusion of Footnote 11 and the official recognition of social science research in *Brown* ushered in a new era of sociological jurisprudence and encouraged more usage of non-traditional legal evidence in the Supreme Court. But the *Brown* decision would not be the end-all-be-all of desegregation. In fact, it was only the beginning. As will be analyzed, like *McLaurin*, *Brown* served as a stepping stone for both desegregation and social science for the next several decades. The next steps were to incorporate the use of social science evidence in

[182] Jackson, 173.
[183] Ibid.

order to enact desegregation policies. This would take place throughout the rest of the twentieth century and carry into the 2000s. Even with years to achieve diversity in schools, as will be seen in a Supreme Court case in 2007, equality, integration, social science, and educational policy came together to make notable changes.

Chapter 3

The Death of Psychological Harm: *Parents Involved in Community Schools v. Seattle School District No. 1* (2007)

Since the Warren Court's decision in *Brown v. Board of Education*, efforts to desegregate schools have varied and did not firmly take root until the federal government intervened. Prior to intervention, a number of white Americans, particularly in the southern states, resisted desegregation and some local and state governments attempted to close public schools in order to prevent integration. In 1955, just one year after the *Brown* decision, the Supreme Court ordered school districts to integrate "with 'all deliberate speed'" in *Brown v. Board of Education II*.[184] The Court also placed the federal district courts in charge of implementing the new desegregation criteria. With the passage of the Civil Rights Act of 1964, southern schools were forced to desegregate their public schools if they wanted to continue to receive federal funds. By the late 1960s and early 1970s, legislation shifted from implementing integration to putting forth government programs to enhance public education for all students, such as Head Start and the Free and Reduced-Price Lunch Program.[185] With the change in legislation, the federal government began to focus more on creating equal education opportunities for students, rather than solely achieving integration.

Although the role of the federal government helped the United States desegregate the public-school system post-*Brown*, a number of cases regarding segregation appeared in the Supreme Court during these years. Many of these cases dealt with the policies the government created for the purpose of desegregation: individual school's desegregation policies (*Green v.*

[184] Stephen J. Caldas and Carl L. Bankston III, "A Re-Analysis of the Legal, Political, and Social Landscape of Desegregation from *Plessy v. Ferguson* to *Parents Involved in Community Schools v. Seattle School District No. 1*," *BYU Education and Law Journal* 217 (2007): 224-5, *BYU Law Library*, Online (accessed on 2 February 2019).
[185] Ibid., 226.

County School Board of New Kent County (1968)), busing students to other schools (*Swann v. Charlotte-Mecklenburg Board of Education* (1971)), and "cross-district desegregation remedies" and busing across districts (*Milliken v. Bradley* (1974)).[186] With these examples, it appeared that desegregation and implementing policy was only a challenge in southern states. But in 1973, *Keyes v. School District No. 1, Denver, Colorado* became the first Supreme Court desegregation case to take place outside of the South.

As the twentieth anniversary of the *Brown* decision approached, *Keyes* showed a number of changes in public schools since 1954: school segregation continued to occur in northern states, student populations included more racial diversity rather than just black and white students (*Keyes* specifically focused on the separation of white and Hispanic students), and the advocates for desegregation policies re-defined *de jure* segregation. Prior to *Keyes*, *de jure* segregation was narrowly identified as segregation implemented by law. Much of this practice was exclusively implemented through the passage of Jim Crow Laws in the southern states. When *de jure* segregation was declared unconstitutional in *Brown*, *de facto* segregation – not ordered by law, but, rather, occurred due to societal patterns, such as housing – remained functionally in place, resulting in its uneven interpretation by the Supreme Court throughout the 1970s and 1980s. With a new light on segregation, the federal government continued to encourage school districts and local governments to become racially diverse and to further integrate the public-school system.[187]

After only a handful of desegregation cases in the 1980s and 1990s, the Supreme Court heard two similar cases dealing with the University of Michigan law school (*Grutter v.*

[186] Ibid., 230-2.
[187] Ibid., 221, 235-6.

Bollinger) and undergraduate admissions (*Gratz v. Bollinger*) in 2003. Both cases dealt with the affirmative action policies that favored minority applicants that the University of Michigan implemented in order to create diversity in their institutions and close the gaps between white and minority applicants in post-secondary education. The Court ruled that the policies were constitutional only if they were narrowly tailored to fairly include all students. As the racial component was "one factor among many considered in [an individualized] admissions process," race could be factored for applicants.[188] But like the distinctions established during the *McLaurin* decision, *Grutter* and *Gratz* only applied to post-secondary education, not to primary and secondary schools.

While the federal government was working to create a new era of desegregation, social science research was experiencing revisions of its own. According to Janet Schofield and Leslie Hausmann in their 2004 article "School Desegregation and Social Science Research," the frequency of social science research focusing on education and desegregation in the decades following *Brown* fluctuated. In what they refer to as the "Immediate Post-*Brown* Years" (1954-1967), very little research was conducted. But research started to increase around the time that the Supreme Court decided *Green*, *Swann*, *Milliken*, and *Keyes*; this period is known as the "Active Empirical Years" (1968-1975). During this time, social scientists became interested in how desegregation impacted student achievement.[189] This new approach was rather notable, as it moved away from the detrimental psychological harm argument that the "AVC Brief" in *McLaurin* and the "Social Science Statement" in *Brown* heavily focused. Instead of seeing if desegregation reversed any of the presumed psychological harms, the social science community

[188] Ibid., 251.
[189] Janet Ward Schofield and Leslie R. M. Hausmann, "School Desegregation and Social Science Research," *American Psychologist* 59.6 (September 2004): 539-540, *ProQuest*, Online (accessed on 23 October 2017).

started examining student achievement in desegregated schools and influencing broader educational policy. With the fluidity of the social science definition, the field and its studies could transition to this new approach.

The next time period Scofield and Hausmann named was the "Redirection, Review, and Disillusionment Years" (1976-1984). During this time, social science research examining school desegregation soared to its peak. Although the general interest in student achievement carried into this stage, Schofield and Hausmann explained that the social science research became "more sophisticated methodologically and/or conceptually."[190] These changes included performing more qualitative studies centered around "intergroup contact in schools" and resulted in "social and academic outcomes."[191] Coupled with the thirty years since the *Brown* decision, social scientists now used their research to conclusively determine the impacts of desegregation on student achievement and relationships in school. With this new evidence, school districts and social scientists could see which areas of public school improved with desegregation and which areas still needed work. As a result, social science research continued to influence the field of educational policy in terms of achievement scores, intergroup contact, and, as will be seen throughout this chapter, school choice and assignment plans.[192] This progression followed what Gunnar Myrdal called for in *An American Dilemma* in the 1944: social scientists were finally using their research to become social advocates for change.

But by 1985, Schofield and Hausmann noted that the amount of desegregation research declined. When their article was published in 2004, the so-called "Recent Period of Decline" was still in effect. Schofield and Hausmann put forth several reasons why this decline occurred, but

---

[190] Ibid., 540.
[191] Ibid.
[192] Ibid., 540-1.

there were two compelling reasons. The first was that social scientists and society were no longer interested in the effects of desegregation and, with a lack of interest, came a lack of research. A second reason had to do with the social scientists' shift from the psychological harm of segregation during *McLaurin* and *Brown* to student achievement in the post-*Brown* years. By the time the "Recent Period of Decline" began, the social science community was so focused on the student achievement aspects of desegregation that re-examining psychological harm was viewed as "an outmoded and even racist emphasis on the deficits of African Americans," thereby deterring individuals from examining this side.[193] Additionally, the few studies that did focus on psychological harm showed that desegregation did not overly improve black students' self-esteem like Clark's Doll Test proposed – which was now seen as a controversial and discouraging in terms of research method. With these factors, Schofield and Hausmann concluded their article with a call for social scientists to reconfigure research on school desegregation.[194]

With a long history of desegregation since 1954 – for both the public-school system and the social science community – it was assumed that by the start of the twenty-first century, both topics would have phased out of the Supreme Court. But, the opposite happened. In June 2007, the Supreme Court ruled 5-4 in *Parents Involved in Community Schools v. Seattle School District No. 1* that two school districts in Seattle and Louisville that implemented school assignment plans with a racial consideration violated the Equal Protection Clause of the Fourteenth Amendment. As the respondents in the case, the school districts argued that with the racial component, the assignment plans fulfilled a compelling interest to preserve integration and was

[193] Ibid., 541-2.
[194] Ibid., 543-4.

narrowly tailored enough to be fairly implemented on all students. Additionally, with support from hundreds of academic social scientists in the form of amicus briefs, the school districts cited social science literature to explain why their use of racial criteria in school assignment plans was constitutional and necessary to preserve the desegregation that they accomplished since *Brown*. Notably, a significant amount of these studies were conducted during the "Recent Period of Decline" that Schofield and Hausmann claimed existed. Even more notable, dozens of social science articles were written after Schofield and Hausmann's 2004 publication. With this information, the proposed decline in research does not completely follow. Instead, an upswing in the social science community's interest in desegregation appeared to be evident in the years leading up to *Parents Involved*.

Unlike the unanimous Opinions in *McLaurin* and *Brown*, *Parents Involved* resulted in a split five-to-four decision with multiple Opinions. The Majority Opinion, accompanied by two Concurring Opinions, found the school assignment plans unconstitutional, as there was no compelling interest and the plans were not narrowly tailored, all of which fell broadly under the Court's evolving "strict scrutiny" standard when considering "racial classifications" in law. Clarence Thomas's Concurring Opinion, along with placing great emphasis on following the "strict scrutiny" standard, also addressed the social science evidence by discussing the flaws of the research that claimed the educational benefits, agreed with briefs submitted by the petitioners that claimed social science evidence was inconclusive, and declared the Dissent too loose in its interpretation of the school assignment plans. However, the Dissenting Justices sided with the school districts and felt particularly drawn to the social science evidence that asserted the educational benefits of integration. With all of the benefits regarding student achievement, the Dissent claimed that the districts needed to consider tactics to keep re-segregation at a minimum.

But what could have caused this shift in opinion and discrepancy with the social science research? After all, both sides of the social science literature were submitted to the Court, but something had to sway the Majority to one side and the Dissent to the other. One explanation was the shift in research interest that Schofield and Hausmann described. During *McLaurin* and *Brown*, the Supreme Court took an interest in the psychological harm argument – but with *Parents Involved*, educational benefits and student achievement became the main focus. The Court was convinced by findings from the former in 1950 and 1954, but it was not convinced with the latter in 2007. Second, the presentation of the social science evidence changed. Instead of the plaintiffs using social science evidence to prove that segregation was wrong, it was the respondents who utilized much of the evidence to prove that desegregation was beneficial enough to factor race into school assignment plans. The role of social science research and writings became questionable in *Parents Involved*.

Yet interestingly, there were a plethora of amicus briefs citing social science research and hundreds of social scientists signing in agreement on behalf of the school districts, which is much more than the support received in *McLaurin* and *Brown*. With the changes in the social science community regarding desegregation, the Supreme Court failed to agree upon the extralegal evidence that swayed their predecessors.

This chapter will examine the social science arguments of *Parents Involved in Community Schools v. Seattle School District No. 1* using a number of briefs submitted to the Supreme Court: the "Brief in Opposition," for both *Parents Involved* and its partner case *Meredith v. Jefferson County Board of Education*, the "Brief of 553 Social Scientists as *Amici Curiae* in Support of Respondents" ("Brief of 553 Social Scientists") and the "Brief for Amici Curiae for the American Psychological Association and the Washington State Psychological

Association" (the "APA Brief"). It is critical to acknowledge that each of these briefs were written in support of the respondents: the Seattle and Jefferson County School Districts. Both of the "Brief in Opposition" are included to provide the background information of the cases and the School Districts' reasons for considering race in their school assignment plans. Notably, as both Districts had access to decades of social science research, some of their reasons will be examined in conjunction with the available research. In addition to briefs supporting the respondents, the "Petition for a Writ of Certiorari" for both *Parents Involved* and *Meredith* are included to examine the petitioners' arguments.

The two amicus briefs were selected due to their connections to social science research and literature. Both the "Brief of 553 Social Scientists" and the "APA Brief" cited hundreds of social science writings since *Brown* in support of desegregation, but as Schofield and Hausmann claimed, the research examined student achievement, educational benefits, stereotypes, and intergroup relationships. There is very little cited research discussing the psychological harms of desegregation. What is interesting to note about both briefs is the publication dates of the cited research, as the "Brief of 553 Social Scientists" cited over one hundred studies since the so-called "Recent Period of Decline" began and at least sixty studies since 2005. The "APA Brief" also followed this pattern with forty studies cited during the "Recent Period of Decline" and over a dozen studies since 2005. Although there has not been a follow-up study of Schofield and Hausmann's article since its 2004 publication, these citations seemed to signify that the social science community's interest in desegregation was brought back leading up to *Parents Involved*. A significant portion if this chapter will be dedicated to an analysis of both briefs and compared to the "AVC Brief" in *McLaurin* and the "Social Science Statement" in *Brown*.

Finally, this chapter will conclude with the Opinions of the Roberts Court, particularly the Chief Justice's Majority Opinion, Thomas's Concurring Opinion, and Stephen Breyer's Dissenting Opinion. The Chief Justice's Opinion will be used to provide the main points of the Majority's reasons for declaring the districts' assignment plans unconstitutional. As they both mention the social science evidence provided in the case, Thomas's and Breyer's Opinions will examine the interpretation of the evidence and how they came to different conclusions using similar, if not the exact same, sources.

Background of the Cases

In the decades following the 1954 *Brown v. Board of Education* ruling to desegregate schools, the Seattle School District became aware of the increasing incidence of racial segregation in housing throughout the district's neighborhoods. Although this was not the fault of the School District, this emerging pattern was viewed as having an opposing impact on the diversity in schools, as most families sent their children to the school within their neighborhood. As a way to re-invigorate racial diversity, the district voluntarily introduced a "'controlled [school] choice' plan," which allowed families to apply for their public school of choice within the district at all grade levels. The first time this plan went into effect was the 1988-1989 school year.[195] This plan was enforced until 1998 when shifts in the district's residential population occurred.

For the 1999-2000 school year, the District adopted an Open Choice Plan for the ten high schools. The Open Choice Plan was similar to the original plan from 1988, as families applied to

[195] Brief in Opposition, *Parents Involved in Community Schools v. Seattle School District No.1*, 551 U.S. 701 (filed 22 March 2006), *Supreme Court Insights*, Online (accessed on 28 January 2018): 2.

attend a specific high school that they preferred. But new to the Open Choice Plan was the use of tiebreakers. Starting in 1999, when a school received more applicants than available seats, the district implemented a series of tiebreakers to be used in sequential order. To start, a student who already had a sibling in the school was given first priority. The second tiebreaker originally dealt with neighborhoods and proximity to the school of first choice as a way to "honor [the school board's] commitment to choice, while also giving preference to families…who lived in the school's neighborhood."[196]

Out of fear of re-segregation due to patterns of residential segregation, the Seattle School Board adjusted its second tiebreaker by 2001. Instead of considering the distance from the student's home to the school, the school board enacted an "'integration tiebreaker'" in order to keep each school as diverse as possible.[197] Under this tiebreaker, any school that substantially differed from the district's overall racial demographics (cited to be 60% minority and 40% white) could consider race when choosing to accept students to the over-subsidized school. In the 1999-2000 school year, schools with over a 10% deviation from the racial demographic (i.e. more than 60% white or more than 70% minority) could consider race as a way to make their student population closer to the district average. In the 2000-2001 school year (after the original lawsuit was filed) the deviation increased to 15%.[198]

For the 2000-2001 school year, five of the ten high schools received more applications than available seats, which allowed those schools to enforce the racial tiebreaker. That year, 300 of the 3000 applicants were denied entry into their first-choice school because of the race-based

---

[196] Ibid.; Linda R. Tropp, Amy E. Smith, and Faye J. Crosby, "The Use of Research in Seattle and Jefferson County Desegregation Cases: Connecting Social Science and the Law," *Analysis of Social Issues and Public Policy* 7.1 (2007): 95, *Society for the Psychological Study of Social Issues (SPSSI)*, Online (accessed on 23 October 2017).
[197] Brief in Opposition, *Parents Involved in Community Schools v. Seattle School District No.1*, 4.
[198] Ibid.; Petition for a Writ of Certiorari, *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701 (filed 18 January 2006), *Supreme Court Insights*, Online (accessed on 28 January 2018): 5.

tiebreaker, a figure that the school district claimed to be statistically minor. But for some students, this practice caused some problems. One white student, who had a number of learning disabilities, was accepted into a hands-on learning program at his first-choice school with the hopes that it would benefit his academic performance Despite being accepted into the program, he was denied admission to this school under the integration tiebreaker. After the rejection, Parents Involved in Community Schools, a nonprofit organization based in Washington D.C., took an interest in the case. Parents Involved was intended to represent students who were negatively impacted by Washington D.C. school district's classification on race in school choice, but since Seattle School District seemed to have a similar method for school-choice, it makes sense why they would join the case as petitioners.[199]

As the petitioner, Parents Involved believed that Seattle School District's integration tiebreaker violated the Equal Protection Clause under the Fourteenth Amendment. First heard in District Court, the Court found that Seattle School District did not violate the Equal Protection Clause. When appealed to the Ninth Circuit, the three judges initially voted unanimously for Parents Involved. But not long after, the judges revoked their decision and ruled in favor of Seattle School District. Finally, after the Supreme Court's decisions in *Grutter v. Bollinger* and *Gratz v. Bollinger*, the Ninth Circuit, once again, found that the Seattle School District violated the Equal Protection Clause, as its tiebreaker was not narrowly tailored enough.[200] With discrepancies between the lower courts – particularly with the Ninth Circuit and their last second

[199] Brief in Opposition, *Parents Involved in Community Schools v. Seattle School District No.1*, 5.; Tropp, et. al., 95.; Petition for a Writ of Certiorari, *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701, 2-4.
[200] Petition for a Writ of Certiorari, *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701, 2, 5-6.

adjustments – *Parents Involved* was accepted to be heard by the Supreme Court in conjunction with *Meredith v. Jefferson County Board of Education*.

Meredith was similar in situation to *Parents Involved*. Located in Louisville, Kentucky – a state known as a longtime follower of Jim Crow Laws – Jefferson County School District had been subject to state-mandated racial segregation laws (*de jure* segregation) for decades. In 1973, the Sixth Circuit handed the District federal orders to eliminate all state-mandated segregation laws from all of their schools. Additionally, along with the implementation of bussing in 1975, the Jefferson County School Board and the District Court enacted various guidelines and student assignment plans in order to further-integrate the School District; these guidelines were revised throughout the 1980s and 1990s in order to keep up with population shifts and changing times, and also satisfying the federal court's orders. Finally, in 2000, it was determined by the District Court that Jefferson County School District was satisfactorily integrated and the federal court orders were removed.[201] Even without the court-ordered desegregation, Jefferson County continued to focus on diversity and integration efforts through its school assignment plans.

Following the removal of the court-ordered desegregation guidelines, the Jefferson County School District adopted a new school assignment plan in 2001 that intended to provide both school choice for families and continue the District's integration efforts. Under the new plan, each school in the District was to have between 15% and 50% of the student population made up of African Americans. If a school was above or below these percentages, it could consider an applicant's race as part of the admissions criteria. However, there were several non-

[201] Brief in Opposition, *Crystal Meredith, Custodial Parent and Next Friend of Joshua Ryan McDonald v. Jefferson County Board of Education, et al.,* 551 U.S. 701 (filed 21 February 2006), *Supreme Court Insights*, Online (accessed on 28 January 2018): 1-2.

traditional schools in the Jefferson County School District that were exempted from this criterion, including "preschools, kindergartens, alternative and special schools, and the four…magnet schools."[202]

The initial petitioners were made up of four white parents. The first three parents filed the initial complaint because their children were denied entry into the magnet schools on the basis of race, which were to be exempted from the racial criteria. The fourth parent, Crystal Meredith, joined the case when her son was denied admission to the traditional, neighborhood school that was across the street from his home because of the racial factor. The denied entry for all four families raised questions, as now, both traditional and non-traditional schools were subject to the racial guidelines. All four parents filed their complaints to trial court, claiming that the Jefferson County School District's admission plan considering race violated the Equal Protection Clause of the Fourteenth Amendment. The District Court found the plan to be constitutional, as it fulfilled a compelling interest of the district and was narrowly tailored to suit the interest. Crystal Meredith was the only petitioner to appeal to the Court of Appeals, where the District Court's ruling was affirmed. After appealing to the Supreme Court, the case was accepted under *Parents Involved.*[203]

The "Brief of 553 Social Scientists," the "APA Brief," and Social Science Literature

There are three aspects of the social science evidence in *Parents Involved* that made this case different from *McLaurin* and *Brown*. First, compared to the non-traditional evidence cited in

[202] Ibid., 1-4.
[203] Ibid.; Petition for a Writ of Certiorari with Appendix, *Crystal Meredith v. Crystal Meredith, Custodial Parent and Next Friend of Joshua Ryan McDonald v. Jefferson County Board of Education, et al.,* 551 U.S. 701 (filed 18 January 2006), *Supreme Court Insights,* Online (accessed on 28 January 2018): 4.

the "AVC Brief" in *McLaurin* and the "Social Science Statement" in *Brown, Parents Involved* differed in the authors and amount of amicus briefs. Instead of citing social science research and writings in a single amicus brief authored by one party, multiple amicus briefs in *Parents Involved* were submitted to the Court and contained non-traditional legal evidence. Some of the briefs that seemed most likely to utilize social science evidence were written by the American Psychological Association (APA) and a highly noteworthy brief signed by 553 social scientists. Different types of non-traditional evidence were cited throughout the briefs, ranging from literature reviews to classroom observations to laboratory experiments. But as Schofield and Hausmann propose in their 2004 article, most of the cited literature examined student achievement and the educational benefits of integrated schooling.

Second, the briefs that were submitted for *Parents Involved* exhibited the flipped nature of the case and desegregation. Throughout *McLaurin* and *Brown*, social science evidence was used by the AVC and the NAACP for three reasons: to support the petitioners, to explore the psychological harms of segregation, and to explain why segregation in public education was wrong. But in *Parents Involved*, most of the social science evidence shifted. Instead of supporting the petitioners (Parents Involved and Crystal Meredith), the American Psychological Association and hundreds of social scientists submitted their briefs in support of the opposition (Seattle School District and Jefferson County School Board). Rather than using social science evidence to fight against state-mandated racial segregation, these amicus briefs were used to support the school districts' continued reliance on racially-based criteria within their school assignment policies.

The third critical difference with the *Parents Involved* social science evidence was within the briefs themselves. As seen in *McLaurin* and *Brown*, the lack of a specific social science

definition provided flexibility for the psychological harm argument to take root. From there, the AVC and the NAACP selected the studies that best supported this argument. However, in *Parents Involved*, there were almost no signs of the psychological harm argument outlined in any of the amicus briefs. Rather, mirroring the larger trends in social science research following *Brown*, the briefs shifted towards a focus on the educational harms that emerged from segregation as well as the educational benefits of desegregation. According to the cited literature, if the Seattle and Jefferson County School District did not consider race and diversity in their school choice policies, the schools were at risk to become racially re-segregated over time. By considering diversity and racial proportions of white and minority students, the D```istricts were intentionally keeping the schools integrated.

A final note to be considered – and will be elaborated on further in this section – were the citations that both briefs reference in regards to Schofield and Hausmann's 2004 hypothesis. Specifically, did the so-called "Recent Period of Decline" truly experience a fall in social science research following the impacts of desegregation? By looking at the publication dates of the cited sources throughout the *Parents Involved* amicus briefs, it is plausible to conclude that "Recent Period of Decline" starting in 1985 was not entirely accurate.

These three aspects – number of briefs, which side was utilizing the social science evidence, and the publication dates of sources – not only presented the progression of social science research since the 1950s. They also showed that social science research was more relevant and heavily emphasized by the losing side's arguments in *Parents Involved*. The losing school districts utilized the social science evidence to defend their assignment policies and encourage desegregation. The districts showed both the positive effects of integrated education

and the negative implications segregation left on a child's education to emphasize the importance of diversity in schools.

But as the respondents, these three aspects may have hindered the case for the School Districts. In *McLaurin* and *Brown*, the Vinson and Warren Courts took an interest in the psychological harms argument, which persuaded the Justices to vote for desegregation. But with hearing the educational benefits instead of psychological harm, the Roberts Court ruled Seattle and Jefferson County School Districts' policies unconstitutional. With this ruling in mind, it was clear that two differing views of social science in school desegregation cases emerged between the Majority and Breyer's Dissenting Opinion that contrasted their predecessors on the Court several decades before.

To better discuss these differences, both the "Brief of 553 Social Scientists" and the "APA Brief" will be examined. As both Briefs were written on behalf of the opponents, the goal was to persuade the Court that there was a compelling interest for the school districts to consider race in school assignment. Additionally, the social science literature cited in both Briefs will be considered, as they did not completely follow Schofield's and Hausmann's proposed timeline of social science research following *Brown*.

A Closer Look at the "Brief of 553 Social Scientists"

As the name implies, the "Brief of 553 Social Scientists" was signed by five hundred and fifty-three social scientists from colleges and universities around the United States. Written on behalf of the respondents, this Brief was significantly longer than the "AVC Brief" or the "Social Science Statement," totaling eighty-five pages. The "Brief" was divided into several sections: the

first fifteen pages contained a summary of the social science findings – namely the educational benefits of racially mixed schools – while all of the social science findings and supporting signers were attached as a seventy-page Appendix. Out of these final seventy pages, the last sixteen pages contain the list of academic social scientists who signed on to the Brief.

The signees and length of the "Brief" revealed a couple of things about the relevance of social science in *Parents Involved*. For one, it indicated that social science research and writings played a significant role in the School Districts' decision for implementing their school assignment plans. Second, just the sheer number of signees showed the Supreme Court that there was substantial evidence to support the educational benefits of racially mixed schools. In the end, the Districts and the respondents in *Parents Involved* had a substantial amount of support from the social science community to back up their logic for the school assignment plans.

In this initial summary, the "Brief of 553 Social Scientists" outlined why the Court should consider the social science evidence. For example, it highlighted the social science community's beliefs that its research provided substantial proof since the *Brown* decision that racially integrated schools were beneficial to a student's education and "elaborate[d] on the harms associated with racial isolation in K-12 education."[204] Although the "Brief" discussed the harms of segregated schooling, unlike *Brown* and *McLaurin*, it only looked at the educational harms, not the psychological harms. Ultimately, the goal of Seattle and Jefferson County School Districts' assignment plans were to preserve the racial balance of schools and allow all students to benefit and thrive from an integrated school environment.

---

[204] Brief of 553 Social Scientists as *Amici Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (filed 10 October 2006), *Supreme Court Insights*, Online (accessed on 28 January 2018): 4

The Appendix to the "Brief of 553 Social Scientists" detailed these benefits in three sections: how individual students and the community improved; how minority schools were harmed by segregation; and why the districts needed to consider race. To start, the Appendix of the "Brief of 553 Social Scientists" focused on the many educational benefits of integrated education and racially mixed schools. These benefits did not just include school achievement; it also included increased understanding of different people through racially mixed social circles, decreased racial prejudice, more opportunities for future education and careers, and, overall, increased the quality of life and employability for children in the future.[205] This outline followed the changes referenced in the 2004 Schofield and Hausmann article, as the "Brief of 553 Social Scientists" did not just address the benefits of children going through school. It also looked towards the future and how integrated education benefited children for life.

In terms of socialization, desegregation, the "Brief" argued, had great benefits for all schoolchildren. For instance, children who attended school with peers outside of their racial group tended to understand people of other races better and developed less prejudice attitudes, especially white students. To explain this point, the social scientists focused on the development of racial stereotypes that followed racial isolation. When white and minority students attended racially separate schools, it was harder for them to learn from one another and decreased intergroup contact. As a result, negative stereotypes, for all races, began to form. As noted in *Brown* as well, "children become aware of racial and ethnic group differences from very young ages" that end up influencing their future values, relationships, and social circles.[206] In order to counteract these harms, children needed to experience integrated schooling as early as possible.

[205] Ibid., 5-10.
[206] Ibid., App. 3-8.

However, even if the school was racially diverse, school tracks may limit intergroup contact. To elaborate, the "Brief" explained that white and Asian students were more likely to enroll in advanced classes while black and Latino students were more likely to enroll in "lower-level classes."[207] This distinction was interesting to note, as it allowed white and Asian students and black and Latino students the chance to interact with each other, but they would struggle to interact with any of the other racial groups. Although this division was most likely based on academic ability and not intentionally race-based, schools needed to keep trends like this in mind if they wanted to create a racially diverse environment that all students can benefit from.

By focusing on racially diverse classrooms, schools accomplished a great deal by improving critical thinking skills and student achievement. With different races and cultural backgrounds came new ideas and information, encouraged student engagement, and increased test scores. But even with this evidence, it was not completely sound proof. For one, the Brief specified that "desegregation appears to have a positive impact on reaching achievement, but there appears to be little or no effect on math scores."[208] On a boarder scope, the achievement levels varied between schools due to voluntary desegregation, age of students, and student's social competence. By acknowledging some of the flaws of the social science research, these claims may have raised red-flags for the Justices, as it showed that the findings were not entirely conclusive. But even with the inconclusive findings, the "Brief" determined that desegregation did not decrease student achievement nor did it negatively impact students.[209] Essentially, schools only reaped the benefits of integration and diversity.

---

[207] Ibid., App. 11.
[208] Ibid., App. 14.
[209] Ibid., App. 14-15, 18-19.

Next, the "Brief" addressed the long-term impacts and life opportunities that students, especially those who are nonwhite, had in racially diverse schools. Although the "Brief" did specify nonwhite students at the start of this section, the next four pages focused on African American students that did not experience racial isolation in school. These students had access to a high-quality education in integrated schools, complete with new technology and books, networking opportunities for future jobs, and a greater chance of attending college and earning more degrees in high-paying career fields. Much of the social science research that supported this claim found that students (regardless of race) experienced these benefits when they lived in diverse communities that included desegregated schools and housing. As a result, they felt comfortable living in pre-dominantly white or racially mixed settings. They also felt confident in their ability to take on leadership roles in society, which contributed to their chances of working in white-collar jobs. When these students became adults, they instilled these values into their own children and social circles, thereby continuing the positive effects of integration into the next generation.[210]

To conclude the long-term benefits of integrated schools, the "Brief" addressed the work force, housing, and parent involvement in children's education. First, integrated schooling created a new workforce and working class for the twenty-first century. Similar to carrying their values from the integrated classroom to their future children, with the decrease in racial stereotypes in integrated classrooms, students brought these values to their future careers in the years to come. Additionally, with minority students becoming more comfortable living in diverse or majority-white neighborhoods, there was a chance for housing to become more integrated over the coming decades. In turn, as students attend public schools in their neighborhoods, the

[210] Ibid., App. 20-4.

schools become more diverse. Social science studies showed that the more racially balanced a school was, "the incidence of [white] flight is reduced," meaning that more white families remained in the integrated public schools instead of sending students to pre-dominantly white schools.[211] Finally, studies found that racially-balanced schools tended to have more parent involvement in the school compared to segregated schools. As a result, parents became yet another resource for the schools to rely on.[212]

The second section of the "Brief of 553 Social Scientists" – titled "The Harms of Racially Isolated Minority Schools" – seemed to align with the psychological harms argument in *McLaurin* and *Brown*. However, this section did not focus on the psychological harms; rather, it focused on the educational harms that resulted from the "notably weaker educational opportunities" of racially segregated schools.[213] Such resources included teacher quality and mobility, challenging classes and classroom resources, and educational outcomes.

In segregated schools, especially those with high rates of minority students, teacher turnover continued to be a problem. The "Brief" explained that teachers, especially those who were white and taught in segregated schools with high proportions of black and Latino students, were more likely to leave their jobs after a couple of years for any number of reasons, ranging from salary to stress to school quality. As a result, these school districts needed to frequently hire new teachers in a pinch. With a difficult environment to work in, the districts could typically only be able to hire novice, and possibly underqualified, teachers. Any teachers with prior

[211] Ibid., App. 24-6.
[212] Ibid., App. 27-8.
[213] Ibid., App. 28-30.

teaching experience were less likely to apply for these positions and contributed to an endless cycle of teacher turnover in the schools.[214]

In addition to teacher turnover, schools that possessed a large minority student population were more likely to lack educational resources to enhance their future learning. Class-wise, these schools were less likely to offer honors and Advanced Placement courses (partly due to the lack of qualified teachers) and students did not feel prepared enough to apply to college. Additionally, with these schools mostly located in poor, segregated neighborhoods, there were fewer tax dollars available to fund the schools and provide basic learning tools for students. As a result of fewer resources and the perceived abilities of students, teachers were more likely to "promote lower expectations for students" and students would "lack cultural or linguistic competence" in return.[215]

To follow, social science research showed that peers had a notable impact on one another in the classroom. According to a number of cited social science literature, including James Coleman's famous 1966 report entitled *Equality of Educational Opportunity* (also known as *The Coleman Report*), a diverse classroom – both by race and social class – could only help students by increasing achievement levels. An example that the "Brief" detailed looked at the experiences of non-English speaking Latino students. If non-English speaking students were immersed in a classroom of English speaking peers and attended schools with other "Latino English Language Learners," they tended to have an easier time learning to read, write, and speak English, especially if the school was comprised of middle-class families.[216] In a diverse school with high-

[214] Ibid., App. 31-3.
[215] Ibid., App. 33-4.
[216] Ibid., App. 35-6.

quality resources, all students had the chance to succeed and learn. In the end, a school that lacked the resources needed for students to be successful experiences low student achievement.

To conclude, the "Brief of 553 Social Scientists" emphasized why schools need racially-conscious school assignment plans similar to those in Seattle and Jefferson County. For one, with "uncontrolled school choice plans," schools were generally "unsuccessful at achieving or maintaining racial diversity."[217] There were two main reasons why this was the case: parents of nonwhite students living in poorer, segregated neighborhoods may not have all of the information about schools for their children and, as a result, end up sending their children to the closest school, which is most likely populated by other nonwhite students. On the other hand, parents of white students tended to have connections to the schools and know which schools would best suit their children, especially those in racially-balanced or predominantly white neighborhoods. As a result, many sent their children to the higher-quality schools with the best resources, which, as seen previously, was not typically a school that was mostly made up of minority students.[218] With this logic, the "Brief" displayed that nonwhite students were not the only ones being segregated; white students were also segregating themselves by not attending schools with high-minority rates. By being interested in creating racially-balanced schools, both Seattle and Jefferson County School Districts were preventing segregation.

Finally, the "Brief" stressed that using socioeconomic status to enforce desegregation plans was a flawed system, especially when they considered students who receive free lunch. There were a number of weaknesses with such plans: free lunch did not necessarily correlate with a family's socioeconomic status (for example, a highly-educated family who recently

[217] Ibid., App. 41-2.
[218] Ibid., App. 41-4.

immigrated to the United States may only be "temporarily poor" until their "cumulative earnings" could be accounted for), race did not always equate to class, and the plan did not factor housing segregation that tended to correlate with school segregation.[219] Further, some schools considered using "income-based integration plans," but they would continue to implement segregated schools.[220] In the end, the "Brief" determined that in order to preserve Seattle's and Jefferson County's racially-balanced schools – and eliminate the risk of re-segregation – their school assignment plans needed to consider race.

A wide variety of social science literature was prominently referenced throughout the "Brief of 553 Social Scientists." But how did the citations compare to Schofield's and Hausmann's findings that social science research and desegregation fluctuated and declined since 1985? The first three eras ("Immediate Post-*Brown*," the "Empirical Years," and "Redirection, Review, and Disillusionment") were observed throughout the "Brief" with each era respectively earning four, eight, and twenty-one citations. As Schofield and Hausmann proposed, the amount of social science research increased from 1954 to 1984. But their notion of a "Recent Period of Decline" was challenged by some of the central features of the "Brief." With one hundred and twenty-two citations of studies published between 1985 and 2004, this era received almost four times as many citations as the three previous eras combined. Even more notably, sixty-nine social science studies are drawn from 2005 to 2007, a period which can be assumed to be part of the "Recent Period of Decline," cited sixty-nine social science studies. With the "Brief of 553 Social Scientists," the respondents showed that the social science community was interested in research on desegregation, possibly even more so than the mid-to-late twentieth

[219] Ibid., App. 46-7.
[220] Ibid., App. 48.

century. The "Brief of 553 Social Scientists" displayed that social science was relevant to *Parents Involved* and there was an ample amount of recent research that showed the educational benefits of integration and diversity.

A Closer Look at the "American Psychological Association Brief"

The second critical Brief – "The American Psychological Association (APA) Brief" – followed a similar pattern to the "Brief of 553 Social Scientists," but with more emphasis on stereotypes and intergroup relationships. Specifically, the "APA Brief" identified the benefits that came with diverse schools and the harms that went with segregation, as well as the short and long-term effects of both sides. To conclude, the "APA Brief" discussed why school districts must be involved with making schools diverse for all students. Using dozens of social science studies conducted during Schofield's and Hausmann's "Recent Period of Decline," the "APA Brief" sought to sway the Court to rule in favor of the Seattle and Jefferson County School Districts.

Attending a racially diverse K-12 school was critical for all students. The "APA Brief" explained that as a number of students will not attend school beyond twelfth grade, this may be the only time they are able to interact with different racial groups before entering the work force. As a result of a racially diverse school, students faced a number of benefits by breaking down and preventing stereotypes that "enable[d] children to develop notions of racial equality and

fairness," especially when it is implemented early on in a child's schooling career.[221] In order to emphasize these benefits, the "APA Brief" first examined the harms of stereotypes.

As natural, automatic thoughts that developed as young as age five, stereotypes greatly hindered social and group relationships. When children were mentally developing at this young age, they were prone to categorizing everything in their life from objects to experiences to people. Especially with people, children started to categorize by race and form racial stereotypes. Stereotypes led to a number of negative consequences, such as the formation of attitudes about other races and personal stereotypes and distorting memories. Personal stereotypes may be the most damaging out of these consequences. According to the "APA Brief," a person typically viewed each member in their group as a unique individual, while they viewed another group as lacking diversity, regardless if either thought was true.[222] The result of these personal stereotypes was the inability to develop relationships with individuals of other racial groups. If this were to occur in schools, then students would never learn to cooperate with people different from them.

Prior to explaining the short and long-term effects of stereotypes, the "APA Brief" expressed concerns that stereotypes were very hard to break after formation. As young as five years old, children started to notice the racial differences in others and become "susceptible to memory effects that lead them to reinforce those stereotypes."[223] Around ten years old, the child became more flexible and complex in their stereotypes to include "'cross-cutting categories."[224] For example, the child considered gender or religion in conjunction with race in order to from their stereotypes. Once children become adults, it was almost impossible for them to change or

---

[221] Brief for *Amici Curiae* The American Psychological Association and the Washington State Psychological Association in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1,* 551 U.S. 701 (filed 10 October 2006), *Supreme Court Insights*, Online (accessed on 28 January 2018): 4.
[222] Ibid., 5-8.
[223] Ibid., 8.
[224] Ibid., 9.

desert their stereotypes, as they personally developed these thoughts for so many years. The "APA Brief" explained that even if adults wanted to adjust their previously formed stereotypes, they would continue to the "spontaneously and unintentionally display implicit bias" they developed all those years.[225] Stereotypes may be assumed to only exist in school among children, but in reality, they carry into adulthood.

Beyond stereotypes, the "APA Brief" centered its second main argument on the intergroup contact theory. First proposed by Dr. Gordon Allport in his 1954 book *The Nature of Prejudice*, intergroup contact theory explained that cooperating with "members of other groups… disarm[ed] stereotypes, while promoting understanding and mutual respect."[226] Beyond Allport's 1954 book, a number of studies have backed intergroup contract theory and proved that entire groups of students, even those who were not directly involved with racial-mixing, experienced changes in perceptions of others. In each of these studies, intergroup contact theory had apparently displayed success by introducing students to different groups and developing "feelings of personal closeness and common connection that transcend race."[227] These findings could be applied to Seattle and Jefferson County's reasoning behind the racial criterion in the school assignment plans: by focusing on the racial make-up of the schools, students would be better able to form intergroup relationships with other students, reduce stereotypes among groups, and gain the benefits of a racially-mixed school.

Next, the "APA Brief" cited a number of social science research and writings going as far back as the "Redirection, Review, and Disillusionment" era (1976-1984) to explain the short and long-term effects of intergroup contact. In the case of short-term effects, studies showed that

---

[225] Ibid., 9-10.
[226] Ibid., 11.
[227] Ibid., 11-2.

students who attended diverse schools displayed less bias and prejudice towards minorities, formed more diverse social circles, and experienced "greater feelings of self-worth."[228]

Interestingly, this was the only portion of the *Parents Involved* amicus briefs that mentioned the psychological harm argument used in *McLaurin* and *Brown*. Even though this was the only attempt to incorporate the former argument, the only component it served was to analyze the short-term effects of the intergroup contact theory. Instead of elaborating on this argument, the APA described their findings in terms of stereotypes and social relations.

There were some key differences between the APA's fleeting reference of psychological harm and its previous relevance during the 1950s. For one, the APA formulated its reference around intergroup contact theory and stereotypes and claimed that all students developed these feelings of self-worth when interacting with their peers of different racial groups. Unlike the "AVC Brief" and the "Social Science Statement," the "APA Brief" did not argue that desegregation alone enhanced the psychological well-being of minority students. Instead, it argued that the social interaction and reduction of racial stereotypes led to a build-up of self-worth. Second, the "APA Brief" explained that every student, regardless of race, could experience these increasing feelings, while the "AVC Brief" and the "Social Science Statement" tended to focus mainly on African American and white students. Even with this passing mention of psychological harm, the social science evidence in *Parents Involved* was still overwhelmingly focused on the educational benefits argument.

Slightly different from the short-term effects, the long-term effects of intergroup contact theory examined both the positive and the negative impacts of having less racial-balance in schools. For positive impacts, as students in racially-diverse schools grew into adulthood and

[228] Ibid., 15-6.

enter the workforce, they continued to live and work in integrated environments and have "'decreased fear of people of color.'"[229] In an essence, the creation of racially-diverse schools was a significant step towards "'break[ing] the cycle of segregation'" in schools, the workforce, and social circles.[230]

Although these impacts could be seen in any school that made racial balance a priority, the "APA Brief" stressed that the results would be the most successful if schools emphasized having a well-diverse student population. For example, instead of having a school contain only white and African American students, the school should work to incorporate students of other races and ethnicities, such as Asian American or Latino students. This logic seemed to line up with increasing intergroup contact, as the more racial groups present in school, the better chances that students will cooperate and interact with one another.

However, the "APA Brief" also provided negative implications if a racial group has smaller representation than others. If one racial group, say African Americans, was severely underrepresented in a school, these students were more susceptible to bullying and harassment from their peers. Further, they may also resort to self-segregation as a way to "maintain group identity" of their race, thereby decreasing the chances of intergroup contact for all and causing an uptick of negative stereotypes.[231] Even though a well-mixed diversity of races proved beneficial to enhance learning opportunities and intergroup contact for all students, schools needed to make sure that all races are well represented.

As a final note, the "APA Brief" addressed the necessity of school intervention in order to increase diversity and intergroup contact. The APA claimed that the school was a critical

[229] Ibid., 19.
[230] Ibid., 19-20.
[231] Ibid., 20-2.

resource in order to achieve all of the perceived befits described. Studies found that stereotypes and prejudice ideas were natural, automatic thoughts that, when fully developed, can led to anxiety among students when having to interact with people of other racial groups. In an effort to curb those anxious feelings, students showed signs of reverting to their own group in order to avoid any and all interactions with members of that group. In turn, this severely decreased the chances of intergroup contact. In order to prevent this from occurring, the APA believed that school districts needed to intervene and guide students through these anxious feelings by forcing them to interact with other groups. Without this intervention, the APA believed that school choice hurt the chances of intergroup contact as parents would choose to send their children to schools where their racial group had a strong representation in the student population. By sending children to schools where the student population was pre-dominantly made up of their race, they lose the chance to experience intergroup contact and continue to feed the anxious feelings of interacting with other groups.[232]

Even though the "APA Brief" cited only fifty-five social science studies compared to the hundreds cited in the "Brief of 553 Social Scientists," it nonetheless effectively used social science research to explain the positive impacts of racial diversity and integration through decreasing stereotypes and increasing intergroup contact. Almost all of the cited literature in the "APA Brief" was published during Schofield and Hausmann's "Recent Period of Decline" (1985 to, in this case, 2007). Out of the fifty-five references, the "Brief" cited forty studies published between 1985 and 2004 and twelve more studies published between 2005 and 2007. The "APA Brief" did follow portions of the Schofield and Hausmann's timeline, but, notably, there were only three studies cited during the supposed peak of school desegregation social scientific

[232] Ibid., 23-6.

research (the "Redirection, Review, and Disillusionment" era), the oldest of which was published in 1978. The "APA Brief" did not cite studies dated from the "Immediate Post-*Brown*" era nor the "Active Empirical Years." Like the "Brief of 553 Social Scientists," there was a continued interest in desegregation in the social science community, despite the perceived reports.

By analyzing the "Brief of 553 Social Scientists" and the "APA Brief," a few discoveries emerged. First, Schofield and Hausmann's article may not be completely accurate. Although the shift from interest in psychological harms of segregation to educational benefits of integration was clearly observed, their timeline of social science appears somewhat questionable. Additionally, by not predicting the future of the research in the 2004 article, the amount of studies cited from 2005 and beyond signifies the social science community's interest in desegregation and school achievement. Second, these two briefs informed the Supreme Court that the benefits of desegregation were observed and noted in social science literature for decades leading up to *Parents Involved* and that Seattle and Jefferson County School Districts had plausible reason to implement a race-based tiebreaker. By explaining the impacts on student achievement, intergroup contact, and the long-lasting effects of desegregation, the school districts looked to provide all of their students with the highest-quality education possible, starting with racial diversity and inclusion.

Court Opinions in *Parents Involved*

On June 28, 2007, just over fifty-seven years to the day the Supreme Court announced their ruling that the University of Oklahoma's treatment of George McLaurin was unconstitutional, the Roberts Court ruled 5-4 in favor of Parents Involved and Crystal Meredith.

With this decision, the Court found that Seattle and Jefferson County School Districts' school assignment plans emphasizing racial diversity violated the Equal Protection Clause of the Fourteenth Amendment. But Justice Breyer's lengthy Dissent (joined by Justices Stevens, Souter, and Ginsburg) showed the controversy and uneasiness regarding the Majority ruling and accompanying reasoning.

There were a number of key differences between the Court's Opinions in *McLaurin*, *Brown*, and *Parents Involved* centering on the understandings of, and the willingness to utilize, social science evidence. For one, the split decision in *Parents Involved* was drastically different from the unanimous Opinions in *McLaurin* and *Brown*. As a result of the split decision, *Parents Involved* contained four Opinions totaling 185 pages. Compared to *McLaurin* and *Brown*, these Opinions were astronomical in length.

But with longer, more complex opinions came more opportunities for social science research to be considered in a variety of ways. Out of the four authors of the Opinions in *Parents Involved*, two of the Justices – Clarence Thomas and Stephen Breyer – specifically mentioned a number of social science studies referenced in the submitted amicus briefs. However, Thomas and Breyer significantly differed from one another on the interpretation of the social science research. In Thomas's Concurring Opinion, the social science evidence seemed to work against itself. In about one-third of his thirty-six-page Opinion, Thomas discussed the flaws of the social science research and writings, how they contradicted the dissent's reasoning, and how social science proved to be inconclusive when analyzing the educational benefits of integrated and mixed-race schools. Meanwhile, Breyer took the opposite stand in the dissent: social science research clearly showed the educational benefits for minority students attending mixed-race

schools. In both cases, social science literature – and, occasionally, even the same exact study – was utilized to prove the points of each side.

In the end, the Majority ruling in *Parents Involved* determined that the school districts' racial criteria in school choice plans was not narrowly tailored enough, thereby deeming both the Seattle and Jefferson County plans unconstitutional. Along with the under-formed definition of social science, the shift from social science research's stance on psychological harm in *McLaurin* and *Brown* to proving the educational benefits in *Parents Involved* led to conflicting views and opened the doors for different interpretations.

In this section, three of the four Opinions in *Parents Involved* will be examined: Roberts's Majority Opinion, Thomas's Concurring Opinion, and Breyer's Dissenting Opinion. A more in-depth analysis of Thomas and Breyer will be done, while Roberts will provide the reasoning for the Majority. Regarding the Thomas and Breyer Opinions, I will consider how both Justices interpreted the social science evidence using specific studies. One 1998 study, Maureen Hallinan's "Diversity Effects on Student Outcomes: Social Science Evidence," was cited by both Justices, yet it is used to explain how social science research is both inconclusive in this case (Thomas) and how it provided the backing for Seattle and Jefferson County's school assignment plans (Breyer).

Majority Opinion of Chief Justice Roberts

After going through the facts of the case and the details of each district's assignment plan, Chief Justice John Roberts based the Majority's reasoning around the lack of a compelling state interest and emphasized the differences between this case and the recent Supreme Court

ruling in *Grutter v. Bollinger* (2003). Specifically, Roberts utilized "strict scrutiny" to formulate his view. Becoming more well-known following the *Brown v. Board of Education* decision in 1954, the "strict scrutiny" standard materialized in post-1945 Supreme Court jurisprudence whenever the Justices considered the constitutionality of a law that included a racial component or race-based "classification."

In order to be deemed constitutional, the law and accompanying racial component needed to satisfy a "compelling state interest and was narrowly tailored to meet that interest."[233] When analyzing the school assignment plans under "strict scrutiny," Roberts and the Majority found that the school assignment plans did not satisfy the compelling interest.

Although both *Grutter* and *Parents Involved* dealt with creating a more diverse student population through the admissions and selection process, the University of Michigan Law School considered other factors besides race in *Grutter*. In *Parents Involved,* race was the sole determination for a number of applicants when the tiebreakers were enacted. Roberts also pointed out the different definitions of diversity and how Seattle and Jefferson County School Districts each provided a limited interpretation of the concept: Seattle viewed diversity and different racial backgrounds as white vs. nonwhite and Jefferson County used black vs. other. Although the Districts may have felt that these were appropriate distinctions based on their population (for example, Seattle had a larger Asian American population than Jefferson County, while Jefferson County had more African Americans in their neighborhoods), they created a "limited notion of diversity" and did not fully contribute to the districts' goals of fostering

[233] Greg Robinson and Toni Robinson, "*Korematsu* and Beyond: Japanese Americans and the Origins of Strict Scrutiny," *Law and Contemporary Problems* 68.2 (Spring 2005): 29, *Gale Info Trac*, Online (accessed on 3 March 2019).

relationships between racial groups.[234] Without a uniform meaning on diversity, and a way to determine how schools are racially diverse, the assignment policies were unable to fairly include all students.

In his next section, Roberts continued to rely on "strict scrutiny" to review the School Districts' interests for their school assignment plans and the proposed educational benefits of integration and school diversity. Instead of referencing precedent, Roberts cited the "Brief of Respondents" to summarize and negate these supposed educational benefits, as the plans "are not narrowly tailored to the goal of achieving educational and social benefits" and did not serve a compelling interest.[235]

Similar to the confusing definitions of diversity, Roberts partly came to this decision due to a lack of evidence from the School Districts to determine how they were racially diverse. For example, when the Seattle School District was asked what numbers would determine a school to be diverse, the District stated that diversity involved "'sufficient numbers so as to avoid students feeling any kind of spectator of exceptionality;" it did not provide a set number that indicated diversity nor did they explain the educational and social benefits.[236]

Finally, Roberts concluded the Majority Opinion with a comparison between *Parents Involved* and *Brown*. Essentially, Roberts saw *Parents Involved* as case of "which side [was] more faithful to the heritage of *Brown*": the plaintiffs' argument that any form of segregation by race was a violation of the Equal Protection Clause, or the respondent's claims that the school assignment plans carried out integration by preventing re-segregation.[237] Roberts sided with the

---

[234] Chief Justice John Roberts, Opinion of the Court, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), *Supreme Court Insights,* Online (accessed on 28 January 2018): 11-15.
[235] Ibid., 17-18.
[236] Ibid., 19.
[237] Ibid., 39.

plaintiffs' argument. He believed that the plaintiffs in *Parents Involved* were arguing along the same lines as Robert Carter and Thurgood Marshall – the lawyers for the plaintiffs in *Brown* – that admission to public school should be based on "on a nondiscriminatory basis" and "a nonracial basis," regardless of the races were claiming to be segregated.[238] In order to properly achieve racial diversity in public education, race needed to stop being considered in admissions altogether, whether as an integration measure or not.[239] With this point, Roberts emphasized the use of "strict scrutiny," concluding that the school assignment plans were not narrowly tailored and did not satisfy a compelling state interest.

Concurring Opinion of Justice Thomas

In his Concurring Opinion, Clarence Thomas focused on the flaws of Breyer's Dissenting Opinion, including his use of social science evidence. To explain his reasoning, Thomas's Opinion emphasized the "strict scrutiny" standard and elaborated on three points regarding the dissent: the differences between re-segregation and racial imbalance, the lack of a compelling state interest, and the return to the segregationists' argument in *Brown v. Board of Education*. Within the Opinion, Thomas referred to several social science studies noted in the amicus briefs to both reject the research and its relevancy to *Parents Involved* and explain its flaws; this was one of the key differences from the Roberts Opinion. Unlike the Justices of Vinson and Warren Courts, Thomas did not believe that social science research was the key to showing the educational benefits of integration and racial diversity. Rather, it exhibited the weak points in the

[238] Ibid., 40.
[239] Ibid., 40-1.

school districts' arguments and proved that "the Constitution enshrines principles independent of social theories."[240]

To begin his Opinion, Thomas explained how both Districts' plans to increase diversity in schools were questionable. Based on the evidence provided, the main reason why Seattle and Jefferson County School Districts wanted to focus on diversity was because they feared the risk of re-segregation due to housing and racial diversity in neighborhoods. Thomas believed that this was not the case for either district. Although the Districts' showed that they did experience racial imbalance, they were not at risk for re-segregation. Thomas explained that there was a difference between racial imbalance and re-segregation, as a number of factors could cause the imbalance, including "innocent private decisions, [such as] voluntary housing choices."[241] Such decisions were not influenced by the School District, nor state laws of any kind, yet they experienced the effects of it. However, due to the differences, Thomas determined that racial imbalance does not follow re-segregation and is not unconstitutional.

Additionally, Thomas also considered the implementation of the school assignment plans and tiebreakers. As previously stated, Seattle School District did not have a history of segregated schools but Jefferson County School District was under Court-ordered desegregation measures from 1975 to 2000 in order to curb state-mandated *de jure* segregation. But by the time both districts implemented their school assignment policies and racial tiebreakers, the Constitution did not require either district to execute "race-based remedial measures."[242] Under this interpretation, neither school district needed to implement desegregation efforts and these school choice plans

[240] Justice Clarence Thomas, Concurring Opinion, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), *Supreme Court Insights*, Online (accessed on 28 January 2019): 35.
[241] Ibid., 3.
[242] Ibid. 7.

were implemented purely for the Districts' interests. For Thomas, this was not a compelling state interest for the racial consideration, as there was no "'strong basis in evidence for its conclusion that remedial action was necessary.'"[243] Because there was no legal basis for these school choice plans, Thomas determined that they were unwarranted and unconstitutional.

Next, Thomas began his references to the amicus briefs and several social science research and writings. Thomas acknowledged a critical flaw with the School Districts' plans: when considering race in an effort "to 'bring the races together,' someone gets excluded, and the person excluded suffers an injury solely because of his or her race."[244] Rather than bringing racial groups together, efforts to prevent racial imbalance led to another group of people being omitted because of their race. In *Parents Involved*, this excluded group happened to be white families trying to send their children to the best school for their education. Thomas specifically discussed school assignment plans at Jefferson County, as Meredith's kindergarten-aged son was barred from attending school within a mile of his home because his race would upset the school's racial balance. If school plans continued in such a fashion, Thomas believed that it would lead to more racial conflicts and bitterness towards other races.[245] For Thomas, this form of forced integration was not the answer to solving racial imbalances in schools.

In addition to the increased conflicts and tensions that arose from forced integration and racial tiebreakers, Thomas examined the School Districts' interests: why were they interested in correcting racial imbalances? In Thomas's words, according to the Breyer's Dissent, the educational benefits of integration were the main reason. In this section, the briefs that made references to social science writings appeared – including the "Brief of 553 Social Scientists."

---

[243] Ibid., 7-8.
[244] Ibid., 13.
[245] Ibid., 10-13.

But unlike the unanimous *Brown* Opinion, Thomas used the evidence in order to question its effectiveness in *Parents Involved*.

In the latter half of his Concurrence, Thomas indicated the flaws that the social science research and Breyer's dissent made, especially their references to the educational benefits of integration. Although the "Brief of 553 Social Scientists" and the "APA Brief" concluded that there were notable educational benefits for African American children in integrated schools, Thomas did not accept these conclusions at face value.

For instance, he noted that there were some scholars – namely John Murphy and David Armor – who disagreed with the educational benefits of integration. Instead, they believed there were little to no benefits in terms of student achievement once schools were integrated. Additionally, the scholars who believed there was an increase in student achievement for minority students provided little support for their arguments. For example, although the "Brief of 553 Social Scientists" "claim[ed] that 'school desegregation ha[d] a modest positive impact on the achievement of African American students,'" Thomas found that the "Brief" did not provide clear evidence for such a statement.[246] Thomas made note of several vague terms of phrases used throughout the "Brief," such as "modest," "'there appears to be little or no effect on math scores,'" and the "'underlying reasons for these gains…are not entirely clear.'"[247] In light of these phrases, the authors of the "Brief of 553 Social Scientists" did not fully assert the great impacts integration had on school achievement. Rather, according to Thomas, they made muddled conclusions that are unpersuasive.

[246] Ibid., 15-16.
[247] Ibid., 16.

To come to this conclusion, Thomas utilized a 1998 article written by Maureen Hallinan entitled "Diversity Effects on Student Outcomes: Social Science Evidence." As noted in Footnote 11 of the Opinion (ironically, the same footnote number that Earl Warren used to cite the social science literature in *Brown*), Thomas found that Hallinan's research proved his view that desegregation and diversity were not the sole reasons for increased student achievement. Rather, Hallinan, a social scientist at Notre Dame and a signer of the "Brief of 553 Social Scientists," found that it was the "'learning advantages some desegregated schools provide[d]'" was the catalyst for student achievement, not the act of desegregation alone.[248] This statement provided Thomas a piece of evidence to prove his point: student achievement would not spike by simply integrating schools and having students of different races cooperate with each other. Rather, the change had to do with the resources, learning opportunities, and higher quality education that could come along with integration. But in integrated schools that could not provide these resources and opportunities to their students, student achievement would not be expected to improve just because of integration.

These flaws that Thomas described led him to other amicus briefs that cited social science research and writings. But this time, these briefs were written to support the petitioners (Parents Involved and Louisville's Crystal Meredith). The two specific briefs that Thomas referenced – "Brief for Dr. David Murphy" and "Brief for David J. Amor" – both argued the opposite viewpoint of the "Brief of 553 Social Scientists": integration had no effect on school achievement. Dr. David Murphy, a former school administrator and a social scientist for over forty years, provided the example of a school district in St. Louis, Missouri that enacted a plan similar to the Seattle School District. After transferring 15,000 students in the district and

[248] Ibid., 16.

implementing hours of bus rides in order to create integration and diversity, Murphy's study found that school achievement did not change between the schools.[249]

David Armor, a public policy professor at George Mason University, analyzed several school achievement studies since *Brown* and drew similar conclusions to Murphy: "there [were] no clear and consistent evidence of benefits for any of the educational and social outcomes."[250] Between the flaws found in amicus briefs favoring the opposition and evidence leaning towards varied impacts on achievement records, Thomas concluded that the social science evidence throughout *Parents Involved* did not support the Districts' arguments that "racial mixing had any educational benefits" and "that integration is necessary to black achievement."[251]

The final sections of Thomas's Opinion focused on attacking Breyer's Dissent, namely how it went against Thomas's belief of a "color-blind" Constitution. Similar to Roberts, Thomas used the plaintiffs' arguments in *Brown*, along with Justice Harlan's Dissenting Opinion from *Plessy v. Ferguson*, to build upon the idea that the Constitution was "color-blind" and never intended to promote racial discrimination or racial balance. Race should never be considered for admission to public primary and secondary school. Thomas believed that Breyer's Dissent did not follow this path by arguing that race must be considered in order to preserve the schools' integration efforts. Thomas even went as far to say that the Dissent's argument was similar to the segregationists' argument in *Brown*. As a final thought, Thomas claimed that "what was wrong in 1954 cannot be right today."[252] To Thomas, if separating school children based on race was

---

[249] Brief of *Amici Curiae* Drs. Murphy, Rossell and Walberg in Support of Petitioners, *Parents Involved in Community Schools v. Seattle School District No.1*, 551 U.S. 701 (filed August 21 2006), *Supreme Court Insights*, Online (accessed on 27 January 2019): 8.
[250] Brief of David J. Armor, Abigail Thernstrom, and Stephen Thernstrom as *Amici Curiae* in Support of Petitioners, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (filed 21 August 2006), *Supreme Court Insights*, Online (accessed on 27 January 2019): 29.
[251] Thomas Opinion, 15.
[252] Ibid., 26-33.

declared unconstitutional, it should carry into the twenty-first century regardless of which races were involved.

The Roberts and Thomas Opinions followed similar paths of interpretation. For one, they both concluded that the racial criteria were unconstitutional under a "strict scrutiny" basis. But from there, each Opinion followed its own path, especially with the use of social science evidence. Partly due to the lack of convincing explanations from the School Districts, Roberts determined that the plans were not narrowly tailored enough to achieve the Districts' diversity goals and, under "strict scrutiny," he could not deem the assignment plans constitutional. Meanwhile, Thomas utilized a decent amount of the social science evidence, but not in the way the respondents proposed. Instead, Thomas noticed the holes in the evidence, finding that the respondent's social science citations were irrelevant and unconvincing. However, his use of other amicus briefs by prominent social scientists remained interesting, as he sided with the Murphy and Armor Briefs to show that social science evidence was not the sole indicator that diversity positively provided social and educational benefits for all students.

Dissenting Opinion of Justice Breyer

Stephen Breyer's Dissenting Opinion favored the side of the School Districts. Joined by Ruth Bader Ginsburg, John Paul Stevens, and David Souter, the sixty-eight-page Dissent determined that the school assignment plans were constitutional, narrowly tailored, and promoted a compelling government interest to uphold *Brown* and prevent re-segregation. Additionally, the Dissent also found that segregation by school systems (what they deemed *de jure* segregation) and residential segregation (*de facto* segregation) were no different from each

other in this case and that it was difficult to replace racial diversity with racial segregation from a constitutional standpoint. In other words, Breyer could not conclude that race conscious assignment plans were unconstitutional, thereby ruling in favor of the School Districts.[253]

Following the detailed background information of both School Districts, an acknowledgement of the difficult tasks the district had with integration, and explaining the legal components of the assignment plans, Breyer moved to applying the legal standards in *Parents Involved.* He emphasized two areas of the legal standards: how the Districts had a compelling interest to enforce the assignment plans and how the plans were narrowly tailored to achieve the compelling interests. Using the submitted amicus briefs and social science literature, Breyer claimed that the compelling interest – prevent re-segregation and preserve integration – had three components that made it a compelling interest: historical, educational, and democratic.

Breyer did not see the consequences of segregation being limited to schools. Rather, he viewed the consequences as impacting all of society, such as housing, the work force, social groups, and the economy. Segregation in each of these areas stemmed from segregation in schools. Since the *Brown* decision, Breyer believed that there was a compelling interest for schools to maintain racial diversity in the education system, as it would carry over into the rest of society once students were out of school.[254] Notably, this was the logic the Chief Justice Vinson used in the unanimous *McLaurin* Opinion, as he considered the long-term effects on McLaurin's segregated doctoral education on the next generation of students he would be teaching post-graduation.

---

[253] Justice Stephen Breyer, Dissenting Opinion, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), *Supreme Court Insights*, Online (accessed on 27 January 2019): 1-5.
[254] Ibid., 37-8.

To follow, Breyer devoted the next page and a half to discussing the educational benefits of racial diversity and how the school assignment plans led to these benefits. Citing a number of social science studies, including Hallinan's article "Diversity Effects on Student Outcome" also cited by Thomas, Breyer found that the "positive academic gains" were "well established and strong enough to permit" racial diversity as a compelling interest.[255] Based on Hallinan's article, Breyer found that African American students experienced remarkable impacts on school achievement when they were incorporated into integrated schools and classes at an early age. Additionally, he explained that the earlier African American children were "removed from racial isolation," the more impactful the benefits would be.[256] Finally, Breyer also found that these black students had more career opportunities than those who attended racially isolated schools.[257]

The third component of the compelling interest was how racial diversity in schools helped students develop the democratic community skills to use beyond the classroom, such as cooperating with people of other races and forming diverse social circles. Using social science literature that pointed to such findings, including Hallinan, Breyer explained that by developing a diverse group in the classroom, students would be interacting in a racially diverse environment that mimics society. By developing these social skills while in school, children will better understand how to develop interracial connections, decrease the rate of segregated housing, and "make a land of three hundred million people one Nation."[258]

To conclude this section of the Dissent, Breyer recognized some of the remarks Thomas made throughout his Concurrence regarding social science literature and the educational benefits

[255] Ibid., 38.
[256] Ibid.
[257] Ibid.
[258] Ibid., 39-41.

of racially diverse schools. Even though both Breyer and Thomas used the same type of evidence, they utilized two different perspectives and interpretations to back up their arguments and contradict the opposing side. Breyer explained that Thomas could interpret the social science literature in any fashion he chose, but he believed that some of Thomas's citations showed the educational benefits, even though Thomas did not believe that the literature proved so. Even though both Justices utilized similar social science studies that resulted in different conclusions, Breyer was not overly concerned about the differences, declaring that "if we are to insist upon unanimity in the social science literature before finding a compelling interest, we might never find one."[259]

Breyer's perspective on the social science evidence was notable, especially compared to Thomas. Even though both Justices dedicated significant portions of their Opinions to the social science literature, and even cite the same research article by Maureen Hallinan, they came to very different conclusions, and Breyer even admitted that they may never come to the same interpretation. This goes to show the influence of the characteristics of the social science research. Because of the missing uniform definition of the subject, social science once again took on a whole host of meanings, interpretations, and perspectives. Breyer and Thomas showcased just two of the many possible interpretations throughout their Opinions for *Parents Involved.*

Unlike the unanimous Opinions in *McLaurin* and *Brown* that moved the nation towards desegregation, the split decision and multiple Opinions in *Parents Involved* created some confusion as to what equal education meant and what social science intended to prove. With *McLaurin* in 1950, equal education was meant to provide all graduate students access to the same resources and educational opportunities regardless of race. Otherwise, their education would be

[259] Ibid., 45.

hindered. This understanding expanded to public primary and secondary schools in *Brown* by 1954. But come *Parents Involved* in 2007, social science redefined equal education to mean increased student achievement among minority students, a decrease in racial stereotypes, and an increase in intergroup relationships and social circles, all of which were meant to improve societal relations for future generations. The Supreme Court unanimously agreed with the 1950 and 1954 reasonings but could not come to a unanimous decision and understanding in 2007. By focusing on the educational benefits of racial diversity in schools, social science literature was unable to sway all nine Justices to support Seattle and Jefferson County School Districts' assignment plans.

Final Remarks

By the time the Supreme Court heard *Parents Involved*, a number of changes with desegregation and social science evidence led the duo away from the psychological harm argument. With the emphasis on educational benefits, ranging anywhere from student achievement to social interactions, social science evidence looked to prove that desegregation benefited all students. Yet even with hundreds of cited studies and more support from the social science community than in the 1950s, the Supreme Court did not buy the social science findings. Perhaps this had to do with the presentation of the evidence, or the holes that it left open, or even the supposed decline in research interest. But in the end, the Roberts Court split on the interpretation of the social science evidence in *Parents Involved* due to the emphasis on the educational benefits of integration.

Over the fifty-seven-year span between *McLaurin* and *Parents Involved*, the social science community grew into its role under legal jurisprudence thanks to the malleable definition of the subject. In *McLaurin*, the social science evidence was summed up in a thirteen-page amicus brief by a newly formed interest group. At this time, the social science research community did not have a strong presence in the battle favoring desegregation nor in the realms of the law and the Supreme Court. Additionally, many involved in the case – lawyers, Justices, and researchers – were conflicted on its interpretation. In *Brown*, social science evidence gained its position in the Court with Earl Warren's Footnote 11. But like *McLaurin*, many were unsure of a uniform meaning of social science, nor were social scientists confident in their role before the Court. Even throughout *Parents Involved*, social science continued to cause confusion and tensions with its meaning and interpretation – yet again, what was social science evidence and what was its proper usage?

Significantly, the organization to make the most prominent shift in their argument was the NAACP. As the founders of the psychological harm argument throughout *McLaurin* and *Brown*, it seemed plausible that the NAACP would carry this work into the twenty-first century. This was not the case in *Parents Involved*. Instead of focusing on the psychological harm of segregation, the NAACP's involvement in *Parents Involved* transitioned to legal reasoning. Specifically, the organization argued for the Court to consider the School Districts' assignment plans through the "rational basis scrutiny" constitutional argument. This begs the question: what implications did the NAACP's shift leave behind regarding the Court's decision in *Parents Involved*?

Epilogue

Social science research, school desegregation, and the United States Supreme Court experienced drastic changes over the last sixty years as sociological jurisprudence and social science evidence made its mark. Much of these changes can be credited to the social science community itself. First and foremost, without a set definition of their field of study, social science was free to shift in research focus, application, and interpretation. These were clearly exhibited throughout the desegregation cases. From a reference, but no formal citations, in 1950 with *McLaurin v. Oklahoma State Regents* to acknowledgment and strong criticisms in 1954 with *Brown v. Board of Education* to mixed thoughts and interpretations in 2007 with *Parents Involved in Community Schools v. Seattle School District No. 1*, the absence of the social science definition provided each case with unique arguments and new perspectives on the benefits of desegregation.

The second influential shift in social science dealt with the role of the social scientist. Coupled with the missing definition, social scientists were unsure of their appropriate roles once their field entered the legal realm in the 1950s. As Kenneth Clark explained in the years following his involvement with the *Brown* "Social Science Statement," social scientists felt conflicted on whether to be the researchers they were trained to be, or whether to act more like lawyers and advocates for change that Gunnar Myrdal called for in 1944 in *An American Dilemma*. By 2007, the role of the social scientist indeed morphed into an advocate for change as the academic community shifted their research interests from the psychological harm of segregation to the educational benefits of integration and diversity in schools.

The third change in social science evidence was the research interest. By almost solely focusing on the psychological harms of segregation in *McLaurin* and *Brown*, the Supreme Court agreed with the plaintiffs and the NAACP that segregation led to negative implications on American society. But with the change to educational benefits of desegregation in *Parents Involved*, the Supreme Court was not convinced by social science due to its flaws and lack of certain findings. Even though some scholars proposed that social science research on desegregation declined going into the twenty-first century, these three cases show that this was not entirely true; social science research was even more relevant and had a much stronger support system by 2007. In a span of fifty-seven years, social science evidence in the Supreme Court concluded with two different research interests, multiple interpretations, and new roles for the researchers themselves.

With all of these changes in social science evidence and sociological jurisprudence between *McLaurin* and *Parents Involved*, there was one organization that greatly showcased the progression: the NAACP. Starting as far back as the 1940s, Robert Carter and Thurgood Marshall practically invented the psychological harm argument on behalf of the NAACP. But by the time *Parents Involved* reached the Supreme Court, decades after both men ended their law careers, the NAACP did not utilize of the psychological harm argument, nor did it make any mentions of social science evidence. Instead, its amicus brief submitted on behalf of the School Districts in *Parents Involved* focused on a more conventional legal reasonings of the case and encouraged the Court to utilize a "rational basis scrutiny" constitutional standard in its decision instead of "strict scrutiny."

With all the changes that occurred with social science and desegregation cases, the use of "strict scrutiny" in each of the analyzed cases remained part of the larger context of the Court's

post-1950s race-related jurisprudence. There were a few types of scrutiny available for the Supreme Court to utilize when deciding race-classification cases – namely, the Court looked at "rational basis" or "strict scrutiny." The Court utilized "strict scrutiny" when a law or policy contained a racial component, such as the University of Oklahoma's segregation policies, the states' laws on public school segregation, and the Seattle and Jefferson County School Districts' school assignment plans. With the racial component, the Court considered the law or policy to be unconstitutional unless the government provided a compelling interest for the law's existence and that it is narrowly tailored to achieve that interest.[260]

In *McLaurin, Brown, and Parents Involved*, this was supposedly the basis the Supreme Court used to determine if race-classification laws were constitutional or not, but with not much emphasis on this standard in the two former cases, it is curious to note the NAACP's explicit dependence on it in its *Parents Involved* "Brief." During *McLaurin* and *Brown*, the NAACP mainly focused on the social science presentation and the psychological harms argument. But by *Parents Involved*, when hundreds of social scientists handled the amicus briefs with the evidence, the NAACP shifted its focus to convincing the Court that "strict scrutiny" did not apply to the case.

Throughout its thirty-page amicus brief, the "Brief of the NAACP Legal Defense & Educational Fund, Inc. as *Amicus Curiae* in Support of Respondents" (the "NAACP Brief") submitted on behalf of the school districts in *Parents Involved* stressed that the Justices should use a "rational basis scrutiny" to decide the case; "strict scrutiny" should not apply. Under "rational basis," the Court would simply determine if the school assignment plans were rationally

[260] Greg Robinson and Toni Robinson, "*Korematsu* and Beyond: Japanese Americans and the Origins of Strict Scrutiny," *Law and Contemporary Problems* 68.2 (Spring 2005): 29, *Gale Info Trac*, Online (accessed on 3 March 2019).

related to a legitimate government objective. According to the "NAACP Brief," the plans were intended to promote the desegregation that was ordered in 1954 with *Brown*, especially as *de facto* segregation was beginning to take route in the form of housing segregation. The policies were motivated by the goal to treat all members of the district "'with equal dignity and respect'" regardless of the individual's race.[261] With this in mind, both School Districts' policies did not intend to exclude any students, but rather, intended to incorporate all students and harvest a diverse, high-quality education.

The Roberts Court did not buy the NAACP's proposition to use the "rational basis" standard in 2007. Similar *McLaurin* and *Brown*, "strict scrutiny" was applied to rule Seattle and Jefferson County School Districts' assignment plans unconstitutional on the basis that there was not a compelling interest and they were not narrowly tailored in a satisfactory manner. Additionally, like the Vinson Court, Roberts distinguished *Parents Involved* from *Gratz* and *Grutter* based on the differences between elementary school and college and graduate level education; almost sixty years later, the Court did not consider these two levels of schooling under the same entity. Although the organization's defense of active desegregation was firm, the NAACP's main reasoning in defense of such changed. Instead of centering their amicus brief around social science and the original psychological harm argument in *Parents Involved,* hundreds of social scientists took control of the evidence's presentation. This too represents a drastic shift throughout the fifty-seven years of desegregation cases.

Overall, social science evidence made its presence known in the Supreme Court. The changing field and the interpretation of the Supreme Court reflected the characteristics of the

[261] Brief of the NAACP Legal Defense & Educational Fund, Inc. as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No.1*, 551 U.S. 701 (filed 10 October 2006), *Supreme Court Insights*, Online (accessed on 27 January 2019): 4-5.

research. As social scientists finally took up Gunnar Myrdal's call to become advocates for change from 1944, educational policy and law started to take shape around the evidence. With this change, more support, research interests, and diverse interpretations of social science and its research created unsuspecting debates amongst the Justices of the Supreme Court.

Perhaps Justice Breyer's Dissenting Opinion in *Parents Involved* properly sums up the last half-century of desegregation cases and its social science research: "if we are to insist upon unanimity in the social science literature before finding a compelling interest, we might never find one."[262] With a missing definition of social science comes a malleable meaning, various research methods, questions of the role of the social scientist, adjustments to the research focus, and new means of interpretation, each of which were intended to evolve over time. There was no single, consistent way for the Supreme Court, and even the social science community, to determine the uniform way to use social science and sociological jurisprudence. It was all up to the individual.

[262] Justice Stephen Breyer, Dissenting Opinion, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), *Supreme Court Insights*, Online (accessed on 27 January 2019): 45.

BIBLIOGRAPHY

Primary Sources

Appendix to Appellants' Briefs, The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (filed 23 September 1952). *U.S. Supreme Court Records and Briefs, 1832-1978*. Online (accessed on 12 March 2018).

Breyer, Stephen. Dissenting Opinion, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007). *Supreme Court Insights*. Online (accessed on 28 January 2019).

Brief of American Veterans Committee, Inc. (AVC) Amicus Curiae, *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (filed 27 January 1950). *U.S. Supreme Court Records and Briefs, 1832-1978*. Online (accessed on 18 March 2018).

Brief for *Amici Curiae* The American Psychological Association and the Washington State Psychological Association in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (filed 10 October 2006). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Brief for Appellants, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (filed 23 September 1952). *U.S. Supreme Court Records and Briefs, 1832-1978*. Online (accessed on 12 March 2018).

Brief in Opposition, *Crystal Meredith, Custodial Parent and Next Friend of Joshua Ryan McDonald v. Jefferson County Board of Education, et al.*, 551 U.S. 701 (filed 21 February 2006). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Brief in Opposition, *Parents Involved in Community Schools v. Seattle School District No.1*, 551 U.S. 701 (filed 22 March 2006). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Brief of 553 Social Scientists as *Amici Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (filed 10 October 2006). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Brief of *Amici Curiae* Drs. Murphy, Rossell and Walberg in Support of Petitioners, *Parents Involved in Community Schools v. Seattle School District No.1*, 551 U.S. 701 (filed August 21 2006). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Brief of David J. Armor, Abigail Thernstrom, and Stephen Thernstrom as *Amici Curiae* in Support of Petitioners, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (filed 21 August 2006). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Brief of the NAACP Legal Defense & Educational Fund, Inc. as *Amicus Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No.1*, 551 U.S. 701 (filed 10 October 2006). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Cahn, Edmond. "Jurisprudence." *Annual Survey of American Law 1955*, no. Part Five (1955): 655-668. *HeinOnline*. Online (accessed on 22 April 2018).

"Campaign Windup: Voters have Cut Through the Hoopla to Make Decisions on Men and Issues." *Life* 1 November 1948: 32.

Clark, Kenneth B. *Effect of Prejudice and Discrimination on Personality Development,* Fact Finding Report Mid-century White House Conference on Children and Youth, Children's Bureau. Federal Security Agency, 1950.

Clark, Kenneth B and Mamie P. Clark. "Emotional Factors in Racial Identification and Preference in Negro Children." *The Journal of Negro Education* 19.3 (Summer 1950): 341-350. *JSTOR.* Online (accessed on 26 March 2018).

Clark, Kenneth B. and Mamie P. Clark. "Racial Identification and Preference in Negro Children." In *Readings in Social Psychology,* Theodore M. Newcomb and Eugene L. Hartley (New York: Henry Holt and Company, 1947), 169-178.

Deutscher, Max and Isidor Chein. "The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion." *Journal of Psychology* 26 (January 1, 1948): 259-287. *ProQuest*. Online (accessed on 26 March 2018).

Gregor, A. James. "The Law, Social Science, and School Segregation: An Assessment." *Western Reserve Law Review* 14.621 (1963): 621-636. *HeinOnline*. Online (accessed 26 Mach 2018).

Levi, Edward Hirsch, et al. "Segregation and the Equal Protection Clause: Brief for Committee of Law Teachers Against Segregation in Legal Education." *Minnesota Law Review* 34.4 (March 1950): 289-329. *HeinOnline*. Online (accessed on 2 December 2018).

McLean, Helen V. "Psychodynamic Factors in Racial Relations." *The Annals of the American Academy of Political and Social Science* 224 (1946): 159-166. *Sage Journals*. Online (accessed on 4 April 2018).

Myrdal, Gunnar. *An American Dilemma: The Negro Problem and Modern Democracy.* New York: Harper & Row, Publishers, 1944.

Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Petition for a Writ of Certiorari with Appendix, *Crystal Meredith v. Crystal Meredith, Custodial Parent and Next Friend of Joshua Ryan McDonald v. Jefferson County Board of Education, et al.*, 551 U.S. 701 (filed 18 January 2006). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Petition for a Writ of Certiorari, *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701 (filed 18 January 2006). *Supreme Court Insights*. Online (accessed on 27 January 2019).

Roberts, John. Opinion of the Court, Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007). *Supreme Court Insights*. Online (accessed on 28 January 2019).

Schofield, Janet Ward and Leslie R. M. Hausmann. "School Desegregation and Social Science Research." *American Psychologist* 59.6 (September 2004): 538-546. *ProQuest*. Online (accessed on 23 October 2017).

Thomas, Clarence. Concurring Opinion, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007). *Supreme Court Insights*. Online (accessed on 28 January 2019).

Van den Haag, Ernest. "Social Science Testimony in the Desegregation Cases – A Reply to Professor Kenneth Clark." *Villanova Law Review* 6, (Fall 1960): 69-79. *HeinOnline*. Online (accessed on 23 October 2017).

Vinson, Fred. Opinion of the Court, McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950). Cornell Law School. Online (accessed on 18 March 2018).

Warren, Earl. Opinion of the Court, Brown v. Board of Education, 347 U.S. 483 (1954). Cornell Law School. Online (accessed on 12 March 2018).

Wilson, Edward B. "What is Social Science?." *Science* 92.2382 (1940): 157-162. *JSTOR*. Online (accessed on 9 October 2018).

Secondary Sources

Ball, Howard, and Philip J. Cooper. *Of Power and Right: Hugo Black, William O. Douglas, and America's Constitutional Revolution.* Oxford: Oxford University Press, 1992.

Caldas, Stephen J. and Carl L. Bankston III. "A Re-Analysis of the Legal, Political, and Social Landscape of Desegregation from *Plessy v. Ferguson* to *Parents Involved in Community Schools v. Seattle School District No. 1*." *BYU Education and Law Journal* 217 (2007): 217-56. *BYU Law Library*. Online (accessed on 2 February 2019).

Jackson, Jr., John P. "Creating a Consensus: Psychologists, the Supreme Court, and School Desegregation, 1952-1955." *Journal of Social Issues* 54.1 (1998): 143-177. *EBSCOhost*. Online (accessed on 23 October 2017).

Klarman, Michael J. *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*. New York: Oxford University Press, 2004.

Kluger, Richard. *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality.* New York: Vintage Books, 2004.

Ramsby II, Howard. "The Vengeance of Black Boys: How Richard Wright, Paul Beatty, and Aaron McGruder Strike Back." *Mississippi Quarterly: The Journal of Southern Cultures* 61.4 (Fall 2008): 643-657. *ProQuest*. Online (accessed on 23 February 2019).

Robinson, Greg and Toni Robinson. "*Korematsu* and Beyond: Japanese Americans and the Origins of Strict Scrutiny." *Law and Contemporary Problems* 68.2 (Spring 2005): 29-55. *Gale Info Trac*. Online (accessed on 3 March 2019).

Rosen, Paul L. *The Supreme Court and Social Science*. Urbana: University of Illinois Press, 1972.

Schwartz, Bernard. *A History of the Supreme Court.* New York: Oxford University Press, 1999.

Scott, Daryl Michael. "Justifying Equality: Damage Imagery, *Brown v. Board of Education*, and the American Creed." *The Journal of Educational Foundations* 10.3 (Summer 1996): 47-67. *ProQuest.* Online (accessed on 23 October 2017).

Southern, David. *Gunnar Myrdal and Black-White Relations*: *The Use and Abuse of An American Dilemma 1944-1969.* Baton Rouge: Louisiana State University Press, 1987.

Tropp, Linda R., Smith, Amy E., and Faye J. Crosby. "The Use of Research in Seattle and Jefferson County Desegregation Cases: Connecting Social Science and the Law." *Analysis of Social Issues and Public Policy* 7.1 (2007): 93-120. *Society for the Psychological Study of Social Issues (SPSSI)*. Online (accessed on 23 October 2017).

Tushnet, Mark. *Making Civil Rights Law.* New York: Oxford University Press, 1994.

Tyler, Robert L. "The American Veterans Committee: Out of a Hot War and Into the Cold." *American Quarterly* 18.3 (Autumn 1966): 419-436. *JSTOR*. Online (accessed on 30 October 2018).

White, G. Edward. *Earl Warren: A Public Life*. Oxford: Oxford University Press, 1982.

ACADEMIC VITA

Sarah A. McKenna
sam6493@psu.edu

EDUCATION

The Pennsylvania State University, Bachelor of Arts in History and Political Science
Graduation: May 2019
Rome Summer Study Program (May – June 2017)

Honors and Awards: Paterno Fellows Program; Schreyer Honors Scholar; Richards Center and Winfree Professor Intern (Summer 2018); Phi Alpha Theta; Phi Eta Sigma; Duane Award for Paterno Fellows (Summer 2018); USG Scholarship Recipient (Spring 2018); Dean's List (Fall 2015-Fall 2018); Presenter at Africana Research Undergraduate Poster Exhibition (Fall 2016)

LEADERSHIP EXPERIENCE

Liberal Arts Envoys – Fall 2015-Present
President April 2017-April 2019
Web Coordinator April 2016-April 2017
Student ambassadors for prospective and current students in the College of the Liberal Arts and the College's alumni

Penn State Club Swimming – Fall 2015-Present
Athlete and THON Participant
Competitor at Collegiate Club Swimming National Championships 2016-2018
THON 2018 Dancer and THON 2019 Weekend Warrior

WORK EXPERIENCE

Matson Museum of Anthropology – August 2018-Present
Volunteer/Student Employee
Conduct inventory of artifacts found at site digs in Centre County for future exhibits and research

Gettysburg National Military Park – Summer 2018
Museum Services Intern
Managed inventory of 15,000+ Civil War items for annual reports and Gettysburg's incoming Collections Management Plan.

RELEVANT PROJECTS AND COURSEWORK

Women in Modern United States History – Fall 2018
Exhibit Label and archival work; displayed by Penn State History Department

The Development of a Leader: Washington at Valley Forge – Fall 2017
Electronic copy of iBook available at Penn State Libraries

Additional Coursework in Secondary Education, Anthropology, & Women Studies.