Volume 5 | Issue 2 Article 5

1959

The Desegregation Cases: Criticism of the Social Scientist's Role

Kenneth B. Clark

THE DESEGREGATION CASES: CRITICISM OF THE SOCIAL SCIENTIST'S ROLE

KENNETH B. CLARK†

BASIC TO THE DIRECT and indirect criticisms which have been raised concerning the role of social scientists in the school desegregation cases is the generally unstated question of the propriety of social scientists playing any role in this type of legal controversy. It is clear that the public school desegregation cases are crucially related to the delicate and specific problems of the relative status of the Negro and white groups in American culture and the equally delicate and general problem of social change. Before one attempts to discuss the specific criticisms or the fundamental questions which they appear to reflect, it might be valuable to attempt an analysis of the social dynamics, the context within which such discussions seem either necessary or desirable. Serious discussion of whether social scientists should play a role in the legal processes related to the desegregation of the public schools would seem no more or less justified than discussions of the following questions:

> Should social scientists play a role in helping industry function more efficiently—make larger profits—develop better labor management relations—increase the sense of satisfaction among the workers?
>
> Should social scientists play a role in helping governmental agencies and key policy makers make more effective and valid decisions?
>
> Should social scientists play a role in attempting to solve the many human and psychological problems faced by the military arm of our government?

The psychological significance of the fundamental problem posed by questioning the relationship between social scientists and the desegregation cases may be even more clearly illustrated by asking the analogous question:

> Should biological scientists play a role in guiding medical research and practices?

† Associate Professor of Psychology, City College of New York; co-founder and Director of Research for Northside Center for Child Development, New York City; Social Science Consultant to the legal staff of the NAACP. A.B. 1935, M.S. 1936, Howard University; Ph.D. 1940, Columbia University.

The answers to the above questions would seem so obviously positive that one is forced to question the validity of the question which is implicit in the criticisms which have been raised concerning the role of the social scientists in the desegregation cases. In searching for an answer, one must look in the direction of understanding the complexity of the power structure of our society and particularly the types of threats to the existing social structure which are inherent in the recent decisions of the United States Supreme Court which ruled that racial segregation in public schools and other forms of state-supported public accommodations violate the equal protection clause of the fourteenth amendment of the United States Constitution. These decisions must be seen as demanding fundamental changes in the power alignments and group status patterns which prevail in our society. The social scientists who collaborated with the lawyers who argued and won these cases were certainly accessories to this demand for a significant form of social change. They themselves might not have been psychologically prepared to accept with equanimity the directness of the involvement or the sweeping demand for social change which the Court's decision precipitated. It is also possible that these changes are not only contrary to the prevailing status hierarchy among the racial groups in our society but also inimical to an important aspect of the continued controlling power pattern of this society. If this is true, the accessory role of social scientists in these decisions subjects them to the criticisms of those who are identified with and seek to perpetuate the racial status quo and the related power controls.

It may be, therefore, that the continued preoccupation of social scientists and their critics with the question of whether they should be involved in this phase of the legal processes reflect their anxiety in the face of these criticisms; and reflects even more concretely the possibility that these criticisms may lead to more punitive controls of those social scientists who continue to identify themselves with "controversial causes"—*i.e.*, causes which threaten the prevailing power alignments in the society.

Social scientists, like other knowledgeable individuals in our society, must be sensitive to the problems of power and the techniques of social control which are operative in the society in which they work. In spite of the demand for objectivity and integrity in the search for truth, the important determinant of serious scientific work, social scientists are influenced indirectly and sometimes directly, subtly and sometimes crudely, by the prevailing social biases and uncritically accepted frames of reference of their society.

Given this perspective, one can then begin to evaluate the specific critcisms which have been raised against the social scientists who have been involved in these desegregation cases. The implications of any of these criticisms are not restricted to the more academic problems of social science theory, methodology, and the nature of social science evidence. Nor are they limited to the more complex problems of the delicate relationship between the social sciences and the law. These are indeed crucial problems which merit continuous discussion and debate in the relatively young and dynamic social sciences. The full import of a given criticism must be understood in terms of whether it clarifies or distorts the larger social issues; specifically, the practical reality of the nature, function, and consequences of racial segregation in American life, the stresses and strains inevitably involved in attempts to change institutionalized patterns of social injustices, and the role of the courts and other governmental agencies in the competition among groups for changes in, or maintenance of, the status quo.

Some of the most intense criticisms have come from political leaders of the deep southern states. Men like Senators Eastland and Talmadge, former Governor Byrnes and Governor Faubus have attacked the Supreme Court's decision not only on the grounds that it violated "states rights" but also, significantly for the purposes of this paper, on the grounds that it attempted to substitute psychological and sociological theories for the law. There is a question whether these types of criticisms should be taken seriously by social scientists since they seem motivated largely by political considerations.

Attacks on the role of social scientists in these cases have not been restricted to politicians who object to the Court's decision and the social changes which they fear may result, but have come also from serious students of jurisprudence and more recently from social scientists. One of the most consistent of the legal critics is the distinguished professor of jurisprudence, Edmond Cahn, of New York University Law School. Ernest van den Haag is an example of a critic from within the field of social sciences. The bulk of this paper will be devoted to an analysis of the criticisms of Professor Cahn and Dr. van den Haag because Professor Cahn has undoubtedly influenced the thinking of other students of jurisprudence[1] and Dr. van den Haag has presented the most specific and intense critical comments that have so far been published by a social scientist.

1. See BLAUSTEIN AND FERGUSON, DESEGREGATION AND THE LAW 135-37 (1957).

Edmond Cahn's Criticisms.

The criticisms of Professor Cahn take many forms.[2] Essentially, however, he states that it is incorrect to believe that the *Brown* decision[3] was "caused by the testimony and opinions of the scientists" and that the constitutional rights of Negroes or any other Americans should not "rest on any such flimsy foundation as some of the scientific demonstrations in these records." He contends that the cruelty inherent in racial segregation "is obvious and evident."

Among his other charges are: (1) that this writer exaggerated the contribution of social science experts to these cases; and (2) that in writing a report of the role of social scientists which was published before May 17, 1954, the writer could not have known that Chief Justice Warren's opinion would not mention either the testimony of the expert witnesses or the statements submitted by the thirty-two social scientists. Professor Cahn added solicitously:

> "The Chief Justice cushioned the blow to some extent by citing certain professional publications of the psychological experts in a footnote, alluding to them graciously as 'modern authority.' In view of their devoted efforts to defeat segregation, this was the kind of gesture a magnanimous judge would feel impelled to make, and we are bound to take satisfaction in the accolade."

In speculating on why the Court did not mention the social scientists' brief in its opinion, Professor Cahn states his personal, subjective reaction that the text of this statement conveyed little or no information beyond what is known as "literary psychology." The fact is, however, that all but one of the references cited by the Court in footnote 11 of the *Brown* decision were cited as references in the social science brief which had been submitted to the Court. The one reference which had not been listed but cited by the Court was Witmer and Kotinsky's *Personality in the Making,* the relevant portion of which was a summary of this writer's White House Conference manuscript on the effects of prejudice and discrimination on personality development.

Whatever might be one's degree of agreement or disagreement with Professor Cahn's estimate of the worth of the social scientists' testimony in these cases or the degree of the Court's regard for the social scientists' material presented in the brief or in the trial records, one must take seriously his argument that the constitutional rights

2. Cahn, Chapter on Jurisprudence, *Annual Survey of American Law,* 30 N.Y.U. L. REV. 150-69 (1955).

3. Brown v. Board of Educ., 347 U.S. 483 (1954).

of Negroes or other Americans should not rest on social scientists' testimony alone. If he had concentrated and elaborated on this issue on a high level of academic discourse, he might have made an important contribution to thought in a field in which he is competent. When he leaves the area of the law, constitutional rights, and matters of jurisprudence and invades the area of social sciences, making broad and general comments about the validity of social science methods, premises, approaches, findings and conclusions, and when he explicitly or implicitly attacks or suggests that the social scientists who participated in these cases as witnesses and consultants did not do so with the utmost personal and scientific integrity, he gratuitously leaves his field of competence and communicates his personal opinions, biases and misconceptions as if they were facts. His prestige in a field in which he has been trained thereby disguises his ignorances in a field in which he has no training. For these reasons, it is necessary to answer these charges and generalizations with clarity.

Some Relevant Facts.

Before one enters a general appraisal of the validity of some of the many assumptions, implications, and charges raised by Professor Cahn, it is necessary to clarify certain points of fact which are relevant to opinions about the role of social scientists in these cases:

> (1) The social scientists who participated in these cases were invited to do so by the lawyers of the NAACP. It was these lawyers who had the primary and exclusive responsibility for developing the legal rationale and approach upon which these cases would be tried and appealed. It was they who made the decision to bring the legal attack on the problem of overruling the *Plessy* "separate but equal" doctrine[4] by attempting to demonstrate that state laws which required or permitted segregation in public schools violated the equal protection clause of the fourteenth amendment. It was their decision that the chances of success would be greater if it could be demonstrated that racial segregation, without regard to equality of facilities, damaged Negro children. Furthermore, it was their decision to determine whether they could find acceptable evidence from social psychology and other social sciences which would support their belief that psychological damage resulted from racial segregation. Social scientists were not involved and did not participate in any way in these initial and important policy or legal strategy decisions. Only after these decisions were made by the lawyers of the NAACP were the social scientists approached and invited by the lawyers to participate in these cases. The social scientists

4. Plessy v. Ferguson, 163 U.S. 537 (1896).

were asked whether there were any relevant scientific studies on the psychological effects of racial segregation. Finally, it was the judgment of these lawyers that the studies and evidence offered by the social scientists were relevant and crucial enough to form an integral part of their trial and appellate case.

(2) The studies which were relied upon by the social scientists in arriving at the conclusion that racial segregation damaged the human personality were not studies which were conducted specifically for these legal cases. Systematic research on the psychological aspects of racial prejudice, discrimination, and segregation had been going on for more than fifteen years. The White House Conference manuscript, which was cited by the United States Supreme Court in footnote 11 in the *Brown* decision, was a compilation of all of the available knowledge of the effects of prejudice and discrimination on personality development in children and was prepared by this writer months before he was aware of the fact that the NAACP intended to bring cases before the federal courts challenging the validity of segregated schools.

(3) The studies cited in this White House Conference manuscript and the joint primary research of this writer and his wife formed the bulk of his testimony in three of these five cases. The primary research studies were conducted ten years before these cases were heard on the trial court level. Professor Cahn's allegation that the writer served in the role of advocate rather than that of an objective scientist in his participation in these cases seems difficult to sustain in the face of testimony given on the basis of research conducted ten years before these cases were heard. One would have to be gifted with the power of a seer in order to prepare himself for the role of advocate in these specific cases ten years in advance.

(4) The use of the "Dolls Test" (actual dolls, not pictures of dolls, were used in this research) on some of the plaintiffs was to determine whether the general findings from the larger number of Negro children who had been tested years before were true also for the children who were the actual plaintiffs in these cases. The decision to test some of these plaintiffs was a legal one made by the lawyers of the NAACP. It was their assumption as lawyers that general scientific findings would have more weight in a courtroom if it could be demonstrated that they also applied in the specific cases and for the particular plaintiffs before the court. When these plaintiff children were tested and interviewed by this writer, it was his judgment that some of these children showed evidence of the same type of personality damage related to racial prejudice, segregation, and discrimination which was found in the larger number of subjects who were studied in the original, published research. This opinion was presented to the courts in the form of sworn testimony.

(5) The justices of the federal district courts were at all times free to rule that the testimony of the social scientists was irrelevant and immaterial. The United States Supreme Court could have refused to accept the Social Science statement which was submitted to it in the form of an appendix to the legal brief of the appellants. If either of these had been done, there would now be no question of whether the courts did or did not reply on the findings and opinions of social scientists.

It is still a matter of social reality that social scientific findings and opinions are not incorporated into, nor do they determine, policy decisions, legislative action, or judicial decisions except to the extent that those who have the power to make these practical decisions choose to accept or reject the relevant findings of scientists. Whether this should continue to be so is, of course, debatable.

"Fidelity," "Truth," and Acadamic Courtesy.

Professor Cahn implies that the primary motive of the social psychologists who participated in these cases was not "strict fidelity to objective truth." This is a serious, grave, and shocking charge.

Professor Cahn did not present evidence to support his implication that the social scientists who participated in these cases, and particularly this writer, betrayed their trusts as scientists. He merely makes the assertion that some day judges will be wise and will be able to notice "where objective science ends and advocacy begins." For the present, however, "it is still possible for the social psychologists to 'hoodwink' a judge who is not overwise . . . ."

It is difficult to take this type of comment seriously. Since it has been published over the signature of an individual who commands the respect of his legal colleagues, it cannot be dismissed. It cannot be waived aside as evidence that Professor Cahn believes himself wiser than the entire legal staff of the NAACP, the battery of lawyers employed by the opposition—including the late John W. Davis, who devoted a considerable amount of space in his Supreme Court brief and in his first arguments before the United States Supreme Court to the social science testimony—or the lawyers of the Department of Justice of the United States, and, finally, the Justices of the United States Supreme Court.

This point must be answered by a description of concrete facts in the relationship between the NAACP lawyers and the social scientists who were involved in these cases. The social scientists who testified in these cases or endorsed the Social Science appendix at the invitation

of this writer were not the type of human beings who were capable, personally or professionally, of testifying to a fact or stating an opinion which they did not believe to be consistent with the scientific evidence as they knew it. These men are neither infallible nor all-wise; but they are the outstanding experts in this field. What is even more important, they are men of integrity.

When the lawyers of the NAACP, in their understandable zeal to develop the strongest possible case, asked the social scientists whether it was possible to present evidence showing that *public school segregation,* in itself, damaged the personalities of Negro children, it was pointed out to them that the available studies had so far not isolated this single variable from the total social complexity of racial prejudice, discrimination, and segregation. It was therefore not possible to testify on the psychologically damaging effects of segregated schools alone. Such specific evidence, if available at all, would have to come from educators and educational philosophers. Some of the more insistent lawyers felt that only this type of specific testimony would be of value to them in these cases. It was pointed out to these lawyers that if this were so then the social psychologists and other social scientists could not be of any significant, direct help to them. A careful examination of the testimony of the social scientists, found in the record of these cases and the Social Science appendix submitted to the United States Supreme Court, will show that the social scientists presented testimony, opinions, and information consistent with the available empirical studies, conclusions, and observations. They presented this information with caution and restraint befitting their roles as trained and disciplined scientists. As expert witnesses, they made not a single concession to expediency, to the practical and legal demands of these cases, or even to the moral and humane issues involved as they adhered to their concept of "strict fidelity to objective truth." Certainly Professor Cahn cannot be the judge of whether his concept of "strict fidelity to objective truth" in the field of social science is more acceptable or valid than theirs.

It must also now be stated that one of the responsibilities assigned to this writer in his role of social science consultant to the legal staff of the NAACP was to advise the lawyers not only about those studies and individuals who were scientifically acceptable, but also to advise and warn them away from studies and individuals of questionable scientific repute. At least one well-publicized report on the damaging effects of segregation on the personality of Negroes was not used in these cases because it was the judgment of this writer, which was

communicated to and accepted by the lawyers, that its methodology was scientifically questionable, its selection of subjects and sampling were clearly biased, and that its conclusions bordered on the sensational. In short, it was believed that in spite of the fact that this study purported to present clear evidence in support of the hypothesis that racial oppression damaged the personality of Negroes, its flaws and scientific inadequacy were so clear it could not be defended in court.

It is difficult to determine precisely what Professor Cahn means by "objective truth." According to his article "most of mankind already acknowledged . . ." that segregation is cruel to Negro children, involves stigma and loss of status, and may ultimately shatter their "spines" and deprive them of self-respect. The "shattering of spines" is Professor Cahn's contribution to the knowledge of the detrimental effects of racial segregation. No social scientist testified to this "fact." Professor Cahn contends, however, that when scientists attempt to demonstrate these same "well-known facts" through their use of the methods and approaches of science, they "provide a rather bizarre spectacle." What is more, he maintains they exaggerate their role, their methods are questionable, their logic and interpretation weak and fallacious, and they distort their findings as they become advocates who seek to "hoodwink" the judges. A serious question would be: How could the social scientists be so unreliable yet nonetheless come out with a picture of social reality which Professor Cahn and everyone else "already knew"?[5]

Professor Cahn presents a novel concept of the relationship between common knowledge and scientific knowledge. The logic of his position rests upon the premise that science concerns itself with one order of reality which is distinct from other forms of reality or truth —that a scientific "fact" has different attributes or characteristics than a "fact" of common knowledge. Another related theme which runs through his comments is that a "legal fact" is distinct from both a "scientific fact" and a "fact of common knowledge."

Cahn's pluralistic approach to the nature of "facts," while not a novel philosophical position, seems to involve a mystical semantic confusion which is inconsistent with the assumptions imperative for

5. It may be noted parenthetically that it is questionable whether all judges share this "common knowledge," as is evidenced by the prior decision that upheld the "separate but equal" doctrine. At any rate, Professor Cahn does not explain why these judges did not act upon their knowledge. In fact, he does not explain how a person not gifted with superior insights can determine what is and what is not "common knowledge" as distinct from the personal biases of judges. Nor does Professor Cahn suggest any means, other than through the medium of expert witnesses, for getting "common knowledge," critically examined, into the court record so that it may be considered by judges who have the responsibility for the final decision.

a scientific approach to the understanding of the nature of man, his society, and his environment.

Science is merely the last of many approaches that man has used in his attempt to determine the "facts" and truth of nature. As the late Professor Einstein has observed: "Scientific thought is a development of pre-scientific thought." Before and coincident with science, man tried mysticism, religion, and philosophy in his attempts to determine the facts of nature. In his quest to control his environment and his relations with his fellow human beings, he attempted to implement his various types of "knowledge" by seemingly compatible techniques of control, *e.g.,* magic, prayers, reason, law, and technology. These various approaches in the quest of truth and the control of the environment were not seeking different types of truth. Indeed, it must be assumed that science and technology developed precisely because earlier approaches to the nature of "truth" and "fact" left much to be desired by way of successful demonstration of the practical utility or the human consequences of these "truths" and "facts."

The development of science as an approach to the determination of truth involved the development of methods for the control of errors in human observation, judgment, biases, and vested interests. These were the factors which seemed to have distorted man's concept of, or blocked his contact with, the "truth" or "facts" of experience. When they are operative, man's "common knowledge" becomes inconsistent with "scientific knowledge." When they are controlled or for some other reason non-operative, "common knowledge" and "scientific knowledge" are coincident—both reflecting the nature of reality, truth, or facts, as these are knowable to the human senses and intelligence.

Science is essentially a method of controlled observation and verification for the purpose of reducing human errors of observation, judgment, or logic. Science begins with observation and ends by testing its assumptions against experience. It is not a creation of another order of reality. In a very basic sense there cannot be a "legal fact" or a "fact of common knowledge" which is not at the same time a "scientific fact." Whenever this appears to be true, one or the other type of "fact" is not a fact.

The Basic Issue.

After one has cut through the emotional irrelevancies of Professor Cahn's article, one is confronted with the basic circuitous plea that the law and the courts of the land should be isolated in Olympian grandeur from the other intellectual and scientific activities of man.

Specifically, Cahn seems primarily—even if unconsciously—disturbed by the fact that the upstarts of the new social sciences should have been involved at all in these important cases which belonged exclusively to lawyers and students of jurisprudence. It is to be hoped that a decreasing number of lawyers believe that laws and courts are sacred and should be kept antiseptically isolated from the main stream of human progress. Such isolation cannot be and never has been true except in the classrooms of some puristic law school professors.

The law is concerned with society and the regulation of human affairs. Social science, government, philosophy, and religion are also concerned with society, its understanding and regulation. Man's relations with his fellow man involve matters far too grave and crucial to be left to lawyers and judges alone. Respect for the law, intelligently and ethically conceived and executed, is essential for stable government. Intelligence and ethics cannot stem from the law alone but must be fed to it through the ceaseless struggles of scholars, scientists, and others toward truth and understanding. This may be difficult for Professor Cahn to accept. It nonetheless remains a fact.

As Brandeis once said: "A judge is presumed to know the elements of law, but there is no presumption that he knows the facts." [6] With the vast range and types of cases which come before the courts, it is unlikely that even the wisest judges and lawyers could be competent in all fields of human knowledge. One may presume that it was a recognition of these facts among others that influenced the decision of the lawyers of the NAACP to seek the help of social scientists in their attempt to overrule the *Plessy v. Ferguson* "separate but equal" doctrine which had dominated civil rights litigation since 1896.

Another important fact which was ignored by Professor Cahn in his castigation of the social scientists' role in these segregated school cases was the fact that this was not the first time that the lawyers of the NAACP had sought to convince the United States Supreme Court that segregation in and of itself was unconstitutional. In the *Sweatt*[7] and *McLaurin*[8] cases they sought a decision on the issue of segregation *per se* by relying on the traditional legal approach. Substantially the same United States Supreme Court which handed down the *Brown* and *Bolling*[9] decisions, however, decided the *Sweatt* and *McLaurin* cases within the framework of the *Plessy* "separate but

6. MASON, BRANDEIS, A FREE MAN'S LIFE (1946).
7. Sweatt v. Painter, 339 U.S. 629 (1950).
8. McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).
9. Bolling v. Sharpe, 347 U.S. 497 (1954) (decided the same day as the *Brown* decision). The Court held segregated schools in the District of Columbia to be unconstitutional.

equal" doctrine. It may merely be coincidental that the lawyers of the NAACP succeeded in overruling the *Plessy* doctrine only after they enlisted an impressive array of social science testimony and talent and attacked this problem with this approach.

Another Point of View.

Some astute students of jurisprudence hold opinions on this issue which differ from those presented by Professor Cahn. The late Alexander Pekelis, in making his case for a jurisprudence of welfare, stated:

> "A great many contemporary judicial decisions show this threefold leitmotif—awareness of freedom, confession of fallibility, and quest for extra-legal guidance . . . .
>
> "A participation of the social sciences in the development of a welfare jurisprudence may bring the normative elements in social science into the light of consciousness, and thus contribute to a healthy development of social theory . . . .
>
> "The economic and social facts of life, which legal realism has taught us, have banished the belief that judicial decisions are brought ready-made by constitutional storks . . . . Similarly, society cannot be built upon judicial whim or expediency alone.
>
> "We cannot turn back the clock. Social scientists (economists, sociologists and psychologists) are with us for good, and are going to remain in the very midst of government . . . . Judges may and should become acquainted with the various non-legal disciplines . . . . A judge should know more about social studies precisely in order to acquire the conviction that they can furnish no more certainty than constitutions, statutes or precedents." [10]

It would be fatuous to argue that because there is difference of opinion among eminent students of jurisprudence that, therefore, judicial opinions should not be taken seriously. Of course there are dangers involved in the use of science in any area of human activity. There are undoubtedly some social scientists who might be willing to sell their intelligence, training, and themselves to the highest bidder. There are those who will be easily intimidated by the practical demands of vested interests and men of power. There are those who will rationalize their subservience by demonstrating their affluence and tough-minded practicality—or even their scientific purity. But this is not new. Science has nonetheless continued its advance and contributions to the ethical and material progress of mankind.

10. Pekelis, *The Case For a Jurisprudence of Welfare,* 2 SOCIAL RESEARCH No. 3, reprinted in 6 LAWYER'S GUILD REVIEW No. 5 (1946).

Ernest van den Haag's Criticism.

The most serious and significant forms of criticisms are those which are now beginning to come from social scientists. Dr. Bruno Bettelheim of the University of Chicago has publicly stated that there is no scientific evidence that racial segregation damages the human personality. More recently, Ralph Ross and Ernest van den Haag published a book entitled THE FABRIC OF SOCIETY. The criticisms by Dr. van den Haag must be seen as distinct from the criticisms of politicians and students of jurisprudence. These are the criticisms of a social scientist who bears the responsibility and must be held to the rules of social science.

In an appendix to chapter 14 of THE FABRIC OF SOCIETY entitled "Prejudice About Prejudice," Dr. van den Haag, who is responsible for this section of the book, makes the following statements among others:

> "Whether humiliation leaves deep and lasting traces and whether it increases the incidence of personality disorders among Negroes, we do not know (nor do we know whether congregation would obviate them)."
>
> "It (the United States Supreme Court) did not depend on the attempt of the social scientists to detect and prove the psychological injuries by 'scientific' tests—which is fortunate for the evidence presented *is so flimsy* as to discredit the conclusion . . . ."

Dr. van den Haag then proceeds to repeat, with some elaborations, Edmond Cahn's criticisms of the role of social scientists in the desegregation cases. According to van den Haag, although the Court "did not depend" upon social scientists, "much weight was given certain 'generally accepted tests' which Professor Kenneth B. Clark undertook with certain Negro children in a segregated school."

> "Professor Clark tested sixteen children between the ages of six to nine in Clarendon County, South Carolina, and elsewhere about three hundred children. This number would be too small to test the reaction to a new soap. Professor Clark seems not to have made sure that his sample is unbiased . . . . It appears, finally, that no attempt was made to compare the reactions of Negro children in segregated schools with those of Negro children in non-segregated schools . . . . He found then that the behavior he had attributed to segregation in his testimony—rejection of colored dolls by Negro children—occurs more often when children are in *non-segregated* schools."
>
> "Professor Clark presented *drawings* (K.B.C.) of dolls to the children . . . . Professor Clark concluded that prejudice had led

> them (the Negro children) to identify white and nice; and even to identify with the white dolls despite their own dark color."
>
> "His general interpretation—that the identification of 'white' with 'nice' is a result of anti-Negro prejudice—is truly astounding . . . ."
>
> "The 'scientific' evidence for the injury is no more 'scientific' than the evidence presented in favor of racial prejudice . . . . We need not try 'scientifically' to prove that prejudice is clinically injurious. This is fortunate for we cannot."

In attempting to answer Dr. van den Haag's criticism of the wisdom of the May 17, 1954, decision of the United States Supreme Court and his criticism of the social science testimony which was presented to the federal courts at the trial level of these cases, one is confronted with a difficult task. To those students who are familiar with the facts of the Supreme Court's decision and the limited role of social scientists in the cases which led to this decision, it will be apparent that Dr. van den Haag's criticisms of this decision and the role of the social scientists are not based upon his direct knowledge of the facts. Either Dr. van den Haag did not read or did not understand the basic documents which are relevant to a scholarly discussion or criticism of these problems.

For example, he states that in its 1954 decision, the United States Supreme Court not only prohibited compulsory segregation but required "compulsory congregation." A careful reading of this decision reveals that nowhere does the Court demand what Dr. van den Haag calls "compulsory congregation." And certainly the Court does not attempt "to compel equal esteem of groups for each other." The Court, after reviewing the legal background and precedence and after alluding to the effects of state enforced segregation on the Negro plaintiffs, concluded ". . . that in the field of public education 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated . . . are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

In reference to his attack on the role of the social scientist and particularly the role of the writer in these cases, it is equally clear that Dr. van den Haag relied upon secondary sources for his "facts" and published his critical analysis without reading the original reports of these research studies and without reading the Appendix to the Appellant's Briefs written by three social scientists and endorsed by thirty-two outstanding research workers in the field of race relations in America. Dr. van den Haag betrays himself by repeating a crucial error which was first found in Professor Cahn's criticism of the role

of social scientists in these cases. He repeats Cahn's error that "Professor Clark presented *drawings* of dolls to the children." A reading of the original reports of this research would have revealed that one of the three methods used in this study was the presentation of *actual dolls* rather than the *drawings* of dolls.

Dr. van den Haag contends that "Professor Clark tested sixteen children between the ages of six and nine in Clarendon County, South Carolina" and "elsewhere about three hundred children." He maintains "that this number would be too small to test the reaction to a new soap." The record of the testimony in the *Briggs* case,[11] reveals that the results of the tests of those sixteen children were not presented as an "unbiased" sample. It was clearly stated that these were the results of the testing of the plaintiffs in these cases.

This writer's testimony in these cases was not based exclusively on his own research findings but on his evaluation of the weight of evidence from other investigations of this problem. The record states:

> "I have reached the conclusion from the examination of my own results and from an examination of the literature in the entire field that discrimination, prejudice, and segregation have definitely detrimental effects on the personality development of the Negro child."

Dr. van den Haag's criticism of the "flimsy" nature of the scientific evidence would have to be taken more seriously if he had examined carefully the nearly sixty references which were used as the basis of the social science brief which was submitted to the United States Supreme Court. If this were too arduous a task, then he could have examined the seven references cited by the United States Supreme Court in footnote 11 of the *Brown* decision.

Further evidence that Dr. van den Haag did not read the original reports of these research studies is found in his distortion of the findings and interpretation of the results of the dolls test and other methods which were used to explore the dynamics of racial identification and preference in Negro children. He states categorically that "Professor Clark concluded that prejudice had led them to identify white and nice." At no point in the report of this original research was this conclusion stated. In fact, the term "prejudice" was not used in the article referred to by van den Haag as the source of his statement. The preferences and identification of these Negro children were interpreted in terms of conflicts in self-esteem and the types of ego pressures which result when the attitudes of a larger society negate the normal self-esteem needs of human beings. If Dr. van

11. Briggs v. Elliot, 347 U.S. 483 (1954) (companion to the *Brown* case).

den Haag had examined the original sources, he would have learned that these studies were conducted more than ten years before the authors had any knowledge that these findings could have any specific practical use. Originally, these were studies in the relatively technical and complex field of the determinants and dynamics of the development of the concept of the self. He would have learned, also, that nowhere in the reports of these early studies or in the social science brief presented to the United States Supreme Court was it ever contended that racial segregation, in itself, accounted for the observed damage in the ego structure of these children. The social science brief submitted to the United States Supreme Court was explicit on this fact:

> "In dealing with the question of the effects of segregation, it must be recognized that these effects do not take place in a vacuum, but in a social context. The segregation of Negroes in the United States takes place in a social milieu in which 'race' prejudice and discrimination exist. It is questionable in the view of some students of the problem, whether it is possible to have segregation without substantial discrimination . . . . The imbedness of segregation in such a context makes it difficult to disentangle the effects of segregation per se from the effects of the context."

In his insistence that "we need not try scientifically to prove that prejudice is clinically injurious" and that this is fortunate "for we cannot," Dr. van den Haag betrays a peculiar concept of science. The assertion that we cannot prove, through the methods of science, the personality damage associated with social humiliation, stigma, and other forms of prolonged adverse social situations is a curious position for a contemporary social scientist to hold.

Probably the most disturbing and revealing aspect of Dr. van den Haag's criticism is the fact that an examination of other portions of his book demonstrates that he maintains a double standard of what he considers scientific objectivity and acceptable evidence. On the one hand, he contends that the writer's work and findings were unscientific and based on a number of cases that "would be too small to test the reaction to a new soap" and on the other hand, he accepts and presents the sweeping conclusions of Rene Spitz based on an unstated total number of children. Whatever the merits or defects of Spitz's work, the question still remains whether the following conclusions drawn by van den Haag are justified:

> "The infant reaching the outside world after dreadful travail, must be made to feel at home if he is to stay. Even the greatest maternal comfort cannot replace what he has left behind."

". . . It seems entirely possible that lack of maternal affection in the first few years of life deals a blow which cannot be mended later."

Dr. van den Haag seems to have one set of standards for the scientific acceptability of findings concerning the effects of hospitalism and maternal deprivation on infants and another set of standards for findings concerning the effects of the total pattern of racial prejudice, discrimination, and segregation on the personality development of children. Nowhere does he reveal the basis for his judgment that the evidence in the latter case is flimsy while the evidence in support of the former can be accepted uncritically as he presents it.

Conclusions.

Those who attempt to use the methods of social science in dealing with problems which threaten the status quo must realistically expect retaliatory attacks, direct or oblique, and must be prepared to accept the risks which this role inevitably involves. Attacks motivated by understandable political opposition or the criticisms which reflect the vested interest or limitations of other disciplines must be expected.

Differences of opinion and interpretation concerning the relative weight to be given to the available evidence must, of course, be expected among conscientious social scientists. In this latter instance, however, certain fundamental rules of social scholarship, consistency and logic must prevail if the controversy is to be intellectually constructive and socially beneficial.

It is a fact that the collaboration between psychologists and other social scientists which culminated in the *Brown* decision will continue[12] in spite of criticisms. Those who question the propriety of this collaboration will probably increase the intensity of their criticism—particularly as social controversy and conflict increase. Nevertheless, some social scientists will continue to play a role in this aspect of the legal and judicial process because as scientists they cannot do otherwise. They are obligated by temperament, moral commitment and their concept of the role and demands of science. They will continue to do so in spite of criticisms or threats. They will do so because they see the valid goals of the law, government, social institutions, religion and science as identical; namely to secure for man personal fulfillment in a just, stable, and viable society.

12. A group of psychologists are now working with the lawyers of the NAACP in an attempt to determine the most effective legal attack on the various types of plans developed by some southern states in an attempt to evade the letter and spirit of the *Brown* decision.