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## FOREWORD

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.<sup>1</sup>

Surely the Supreme Court's decision in *Brown v. Board of Education*, handed down twenty-five years ago, will be listed among the few events that have significantly affected life in twentieth-century America. But although the Supreme Court and Congress have written the *principle* of equality into our laws, a quarter of a century later those laws have not yet been translated into real social justice, and the process of doing so is a difficult, challenging, and often painful one.

Social science research has been used and misused in the continuing struggle to turn the principle of equality of educational opportunity into a reality—from the research studies cited in footnote eleven in *Brown* itself to the current research on the consequences of desegregation for white flight, student academic performance, and other areas of contemporary concern.

The legal, social, and educational implications of the Supreme Court's decision in *Brown* seem much more difficult to sort out, more complex, and more clouded today than they ever seemed in 1954. As we end this decade, what viable policies can we construct for effectively and fairly implementing the moral as well as the legal command of *Brown* in the 1980s? As judges and lawyers struggle with the diverse legal issues arising from *Brown*,<sup>2</sup> and federal, state, and local government officials try to develop effective solutions to the still pervasive problems of racial and ethnic isolation, unequal education, and

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1. *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

2. Illustrative examples of the kinds of issues that confront the courts were provided in the Foreword to the symposium issue, *The Courts, Social Science, and School Desegregation*, published by this journal in 1975. 39 LAW & CONTEMP. PROB., Winter 1975, at 1 n.4. Some of those issues have been resolved by the Supreme Court in the intervening years, but other issues have cropped up. For example, the existence of segregated schools that result from residential patterns of segregation does not impose an affirmative constitutional duty on school officials to redress the racial imbalance without a finding of deliberate intent to discriminate. See, e.g., *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 413 (1977), citing *Washington v. Davis*, 426 U.S. 229 (1976). It is unclear, however, what kinds of findings are required for imposition of a particular remedy. See, e.g., *Dayton*, 433 U.S. at 420; *Milliken v. Bradley (Milliken II)*, 433 U.S. 267 (1977).

poor quality education, there seems to be little agreement on the weight to be accorded social science research findings. In what ways *can* social science research provide helpful answers? What are the limits to the uses of social science research in resolving legal and policy issues? What are the misuses of such research?

In 1974, during the year of the twentieth anniversary of the decision in *Brown v. Board of Education*, a number of the nation's leading social scientists and lawyers met to explore issues of the relationship between legal decisions and social science research. The objectives of the conference were: to identify the nature of the legal issues confronting courts twenty years after *Brown* and to clarify which of those issues could be illuminated by social science research; to identify the issues on which there was agreement among social scientists or disagreement about the research findings and the conclusions to be drawn from those findings; and to determine what further research was needed before valid conclusions about the effects of desegregation could be drawn. The product of that conference was published as a symposium entitled, *The Courts, Social Science, and School Desegregation*, in a 1975 issue of *Law and Contemporary Problems*.<sup>3</sup>

As a result of the conference and the broad reception the symposium publication received, it seemed appropriate to develop a more long-range mechanism for responding to many of the questions raised about desegregation and to broaden the scope of the effort to include the concerns of policymakers in arenas other than the courts—to address such figures as federal and state legislators, other elected and appointed government officials, and educators at the state and local levels. Thus, a panel of nationally known lawyers and scholars was assembled. The panel was charged with preparing, over a three-year period, a comprehensive assessment of the current state of the law and research on school desegregation and defining the issues that needed to be clarified and the research that should be undertaken. An advisory committee of prominent judges, lawyers, policymakers, and researchers has guided the panel in its work.<sup>4</sup>

Thus, in this twenty-fifth year of the *Brown* decision, *Law and Contemporary Problems* is publishing in this symposium issue the interim results of the evaluations of social science research related to the legal and policy issues involved in school desegregation. The focus of this symposium issue is not whether the schools of this nation should be desegregated: that issue has been resolved so far as we—and the courts—are concerned. Instead, our focus is on ways to improve the chances that desegregation will have positive consequences for the children and communities affected. Through the articles in

3. 39 LAW & CONTEMP. PROB., Winter 1975; 39 LAW & CONTEMP. PROB., Spring 1975.

4. Lists of the panel members and the advisory committee members appear at the end of this Foreword.

this symposium, we hope to foster a greater understanding of existing research and its uses *and its limits* in legal decisions and educational policy-making, and to give direction to future research that will ensure that the process of desegregation is effective. This symposium provides a critical evaluation of ongoing research in desegregation by those currently engaged in research, who are thus in a position to assess the methodological strengths and weaknesses of the research and evaluate its usefulness to the debate.

Among the areas of concern are the effects of desegregation on academic achievement, personality development (especially self-esteem and aspirations), race relations, opportunities for higher education and social and economic mobility, and the degree of harmony or conflict within the community. On the basis of careful reviews of existing research, the articles identify some ideas about desegregation that can be confirmed, and some that can be set aside as myths. They also identify some conditions that will achieve positive consequences, under some circumstances, in one or more of the areas of concern noted above. Other articles seek to clarify how the results of social science research are related to the issues before the courts and policymakers at all levels of government.

Almost all of the social scientists writing for this symposium, in reviewing the existing research—published and unpublished—in their respective fields note how little competent research has actually been done to date. Another area of almost total agreement among the writers of this symposium is that much of the social science research that has been the far too narrow focus of the social, political, and legal justifications for desegregation has used inadequate methodologies, inappropriate samples, varying definitions of critical variables such as desegregation or student outcomes and reached contradictory or ambiguous conclusions. Basing policy on this body of research misconceives the legal and moral issues and often has diverted our attention from the appropriate questions.

When considering why so little is known about the consequences of the desegregation process a quarter of a century after *Brown* was decided, it is useful to remember that even today many communities—particularly in the urban North—have experienced little or no desegregation<sup>5</sup> and that many other school districts are only now undergoing desegregation. There was almost no public school desegregation anywhere in the country for over a decade after *Brown*;<sup>6</sup> and while the late sixties and early seventies saw some sig-

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5. A recent study found that nearly one-third of all minority students in six Northern industrial states (Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania) were attending segregated schools in 1976. Institute for Southern Studies, News Release (May 9, 1979) (for *Just Schools*, a special issue of *Southern Exposure*); see report in N.Y. Times, May 9, 1979, § A, at 16.

6. As late as 1968, 75% of the South's minority students still attended essentially segregated schools. The national figure was 53%. *Id.*

nificant gains in the South,<sup>7</sup> there was little desegregation in the North and the West.<sup>8</sup> Thus, our national experience with school desegregation has been so brief, with most of the largest cities yet to experience it, that it is difficult to determine what the long-range impact of the desegregation process on education might be.

In the first volume of this symposium, several articles review the extent to which existing social science research can identify the social, psychological, and educational consequences of desegregation and attempt to delineate the kinds of research that should be done in the future to clarify relationships and to better identify the conditions under which the consequences are likely to be positive. Robert L. Crain and Rita E. Mahard review the research on the impact of desegregation on student achievement and find that, in general, the achievement scores of whites are not negatively affected by desegregation, and that the effect on black achievement scores is mixed. The methodologically strongest studies, however, tend to show that desegregation has a positive effect on black student achievement. Moreover, Crain and Mahard's re-

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7. Following *Brown II*, 349 U.S. 294 (1955), the South took various measures to delay, evade, and impede the implementation of *Brown I*. These measures included: the adoption of interposition resolutions in five states, see McKay, "With All Deliberate Speed": A Study of School Desegregation, 31 N.Y.U. L. REV. 991, 1017-20 & nn.166-80 (1956); the closing of schools, see, e.g., Griffin v. County School Bd., 377 U.S. 218 (1964), and other acts of "massive resistance," see, e.g., Cooper v. Aaron, 358 U.S. 1 (1958); enactment of pupil placement and transfer laws, see, e.g., Goss v. Board of Educ., 373 U.S. (1963); and the adoption of grade-a-year plans, see, e.g., Gaines v. Dougherty County Bd. of Educ., 334 F.2d 983 (5th Cir. 1964); Boston v. Rippey, 285 F.2d 43 (5th Cir. 1960); Kelley v. Board of Educ., 159 F. Supp. 272 (M.D. Tenn. 1958), *aff'd*, 270 F.2d 209 (6th Cir.), *cert. denied*, 361 U.S. 924 (1959). In addition, the failure to have any faculty desegregation ensured that schools remained identifiably black or white. See Bradley v. School Bd., 382 U.S. 103 (1965). Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d)-2000(d)(4) (1976) and the HEW guidelines, OFFICE OF EDUCATION, U.S. DEPT OF HEALTH, EDUCATION, AND WELFARE, GENERAL STATEMENT OF POLICIES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 RESPECTING DESEGREGATION OF ELEMENTARY AND SECONDARY SCHOOLS (April 1965); REVISED STATEMENT OF POLICIES FOR SCHOOL DESEGREGATION PLANS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (March 1966), provided an additional impetus for desegregation. Nevertheless, until 1968 there were still dual school systems, the only change being a handful of blacks who overcame physical and economic threats to attend formerly all-white schools. There were no whites in black schools.

Finally, in *Green v. County School Bd.*, 391 U.S. 430 (1968), the Supreme Court rejected yet another delaying tactic from the Southern arsenal—freedom of choice plans—opening up the way for progress in the South.

8. In the North, where segregation had not been required by state law, there was only limited legal activity until the Denver case in 1973, which indicated that intentional assignments of pupils by school authorities for purposes of maintaining segregation constituted de jure segregation. *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973). Thus, the first case outside the South to reach the Supreme Court was decided *nineteen* years after *Brown*. And in 1974, only a month or so after the twentieth anniversary of *Brown*, the Supreme Court made it clear that even where school districts were clearly segregated by deliberate discriminatory actions of state and local officials, the remedy for such a de jure segregated urban school district was confined to its borders, thus ensuring that it would become a predominantly minority district. *Milliken v. Bradley*, 418 U.S. 717 (1974).

view indicates that the earlier the grade at which desegregation occurs, the more positive the impact it has on achievement. And achievement gains are more likely to occur when reassignment is mandatory. The authors conclude that the mixing of the races alone, by simply reassigning pupils, is *not* likely to result in higher black student achievement. However, if the reassignment is accompanied by reform of the curriculum, by better trained teachers, by socioeconomic desegregation, then it will probably result in improved scores. Where white teachers in the receiving schools are biased against blacks and express this in the low expectations they set for black students, where race relations are so poor that positive interactions between the races rarely occur, where there is community protest and the schools are in turmoil, the achievement scores of blacks may not improve in the short run. Variations of this theme—that what happens in the schools after desegregation, rather than the mere fact of desegregation, is what is important—are repeated in most of the other articles.

Edgar G. Epps examines research on the impact of desegregation on the aspirations, self-esteem, and other aspects of personality of black children. Epps demonstrates that the research in this area is of mixed quality and that the findings are generally inconclusive. The research findings do indicate, however, that desegregation has no significant negative effects on the psychological development of minorities. His conclusion is that the comparison of the effects of segregation and those of desegregation on the development of children makes little sense. As with research on achievement, it is the experience within the desegregated schools and classrooms that should be the focus of research.

In his evaluation of the research on school desegregation and race relations, John B. McConahay finds that very few of the existing studies are sound enough methodologically to enable any conclusions to be drawn. Drawing on several studies and on related research concerning interpersonal relations, McConahay finds that while students in desegregated schools have not reached the state where race is not a factor in relationships, interracial friendships are being formed, and this clearly could not happen in segregated schools. He concludes, as do many of the other authors in this symposium issue, that what happens *within* the desegregated schools is most important in shaping interracial behavior than the mere fact of desegregation.

James M. McPartland looks beyond the immediate effects of school desegregation on students in their elementary and secondary school years to its effects on their postsecondary educational and occupational opportunities. The research findings reveal that attendance and completion appear, in some circumstances, to be related to whether or not black students had attended desegregated elementary and secondary schools. McPartland also reports some evidence that blacks who attended desegregated schools, in part because

of greater access to informed sources of information about employment opportunities and increased confidence in interracial situations, are more likely than those who attended segregated schools to have jobs with higher prestige and income.

Christine H. Rossell's article focuses primarily on the impact of desegregation on the community, rather than on the students themselves, although the nature of the community response clearly affects the students. From her review of existing research as well as from her own research, she concludes that there is substantial agreement among researchers—more than is currently acknowledged—on “white flight” research findings. The disagreement is actually in the implications to be drawn from those findings. Rossell's analysis of recent studies indicates that if the school district has a large minority pupil population, there will be substantial white flight, at least in the short run. If the court- or board-ordered desegregation plan is a one-shot, comprehensive plan rather than a plan that phases in various parts of the city at different times, there is less white flight. If the plan is a metropolitan-area plan there is less white flight. Finally, magnet schools are not likely to achieve desegregation unless they are a component of a *compulsory* plan. The magnet schools then are somewhat effective in holding whites who might otherwise leave. Her article also examines the factors affecting group protest demonstrations and protest voting, and community racial attitudes and behavior.

The second volume of the symposium deals with the relationship of social science research to legal and public policy decisions. As an introduction to this volume, Betsy Levin examines the extent to which courts rely on social science evidence—and the character of that evidence—in devising school desegregation remedies. She focuses on four areas of concern: busing, white flight, magnet schools, and compensatory education.

In the 1975 Symposium, the judicial evolution of the law of school desegregation from *Brown* to *Milliken v. Bradley*, the Detroit case, was traced.<sup>9</sup> Also in that issue, the legal issues in school desegregation faced by lower courts twenty years after *Brown* and the extent to which social science research was brought to bear on the resolution of those issues were delineated.<sup>10</sup> In the current symposium, William L. Taylor brings those two articles up to date, focusing on how the Supreme Court has dealt with questions involving the appropriate standard for determining whether there is a constitutional violation in school districts where segregation was not mandated by law before 1954; the standard for determining the scope of the remedy; the extent to which a court may intervene once the remedy has been implemented; the circum-

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9. Read, *Judicial Evolution of the Law of School Integration Since Brown v. Board of Education*, 39 LAW & CONTEMP. PROB., Winter 1975, at 7.

10. Levin & Moise, *School Desegregation Litigation in the Seventies and the Use of Social Science Evidence: An Annotated Guide*, 39 LAW & CONTEMP. PROB., Winter 1975, at 50.

stances under which interdistrict remedies are appropriate; and the role that social science evidence has played, or could play, in the responses to these questions.

The legal issues raised by the desegregation of tri-ethnic communities, particularly where Hispanic students are involved, is the focus of Peter D. Roos' article. Roos identifies the complex issues that arise when questions of bilingual education and ethnic isolation are raised together and then examines the debate, barely illuminated by limited and ambiguous social science research, between those who advocate immersion into the mainstream culture and those who seek bilingual-bicultural education.

Mark G. Yudof analyzes several of the Supreme Court decisions from a jurisprudential perspective and finds that the Court has been inconsistent and less than forthcoming about its views on desegregation. The Court's shifting perspectives have ranged from what Yudof terms a nondiscrimination principle to an integrationist principle, and social science has played only a very limited role in these shifts. Indeed, in his view, social science research may never be able to provide answers to some of the difficult constitutional questions, nor should it.

The problems that arise when school desegregation research findings are transmitted to the policy arena are documented by Gary Orfield. He examines the nature of the obstacles in the path of the effective use of social science data in developing remedies for segregation, and the dilemmas faced by judges, administrators, and elected officials who must make and implement decisions regardless of the conflicts and confusion among scholars in some areas of school desegregation research.

Mark A. Chesler and his co-authors, James E. Crowfoot and Bunyan I. Bryant, focus on programs and policies likely to bring about effective desegregation that can be incorporated in school desegregation plans. These authors suggest that identification of which approaches are more likely than others to work may require an understanding of the underlying assumptions people have about schools and the factors that lead to institutional change.

In the concluding article, Willis D. Hawley summarizes the results of existing social science research on the effects of school desegregation and applies these findings to the tenets of the "new mythology" of school desegregation, which he argues is both a reflection and a cause of a weakening national commitment to school desegregation. Hawley concludes that the pervasive belief that desegregation does not produce positive outcomes for students and that desegregation has high social costs—such as community conflict—finds little support in social science research.

While the annual conferences held between 1977 and 1979 and the preparation of the articles for this symposium issue of *Law and Contemporary Problems* were supported by grants from the Ford Foundation and the National

Institute of Education, none of the views expressed herein is necessarily endorsed by either of those organizations.

The editors hope that the objectives of this symposium issue—to broaden the understanding of the interrelations between social science, law, and public policy in the area of school desegregation; to clarify the knowledge gained from the increasing interactions of these disciplines; and to propose a research agenda for the future—will not only interest and inform academics but will also aid judges, lawyers, educators, and federal, state, and local policymakers in their continuing efforts to bring about equal educational opportunity for all children.

BETSY LEVIN  
WILLIS D. HAWLEY