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SOCIAL SCIENCE TESTIMONY IN THE DESEGREGATION CASES — A REPLY TO PROFESSOR KENNETH CLARK

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EDMOND CAHN[1] and I[2] criticized Professor Kenneth Clark's experiments which, according to his testimony (presented in various stages of litigations decided by the Supreme Court[3]) prove that segregation damages the personalities of Negro children. In his answer,[4] Professor Clark argues lengthily for admission in legal proceedings of competent testimony by social scientists. This is quite beside the point. I objected only to misleading testimony, specifically, his. So did Edmond Cahn, to wit: "we ought no longer to debate the general admissibility of testimony from authentic social science sources . . . we ought to welcome and encourage evidence of this kind."[5]

Since Cahn favors the Supreme Court's decision in *Brown v. Board of Educ.*[6] he was anxious to find out whether it rested on Professor Clark's testimony and thus possibly was vitiated by it. He was relieved to find that it did not. I concur with this finding, on the whole, though no one will ever know to what extent the Court's common sense view that Negroes are humiliated and frustrated by segregation was reinforced by Professor Clark's pseudo-scientific "proof". Probably Professor Clark has done but negligible damage to the Negro cause and to the integrity of our judicial processes. But I remain disturbed about the disrepute his "evidence" could not fail to bring to social science if it were taken seriously. And it seems to be.[7]

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1. Cahn, *Jurisprudence,* 30 N.Y.U.L. REV. 150 (1955).
2. ROSS & VAN DEN HAAG, THE FABRIC OF SOCIETY 163-66 (1957).
3. Bolling v. Sharpe, 347 U.S. 497 (1954); Brown v. Board of Ed., 347 U.S. 483 (1954).
4. Clark, *The Desegregation Cases: Criticism of the Social Scientist's Role,* 5 VILL. L. REV. 224 (1960).
5. Cahn, *Jurisprudence,* 31 N.Y.U.L. REV. 182, 192 (1956). Cahn's essay contains a broad and stimulating discussion of the desirability of "authentic" and the undesirability of incompetent testimony by social scientists. It completes and elaborates criteria implicit in the article cited in note 1 *supra* and applies them to the testimony of Professor Isador Chein in the *Girard Trust* case. See Transcript of Record, pp. 574-76, Girard Trust, 5 Pa. Fiduc. Rep. 449 (Orphans' Ct., Phila. 1955). Professor Chein, unlike Professor Clark, did not attempt to prove his views experimentally. Rather he suggested that an opinion, if it comes from him, is *ipso facto* scientific. To this *differentia* Cahn addresses himself.
6. 347 U.S. 483 (1954).
7. See *e.g.,* Appendix to appellants' brief in Brown v. Board of Education.

Unlike Edmond Cahn, I am doubtful, as well, about the wisdom of the decision in the desegregation cases. Though more vague and less crude, the Court's reasoning strikes me as having something in common with Professor Clark's conclusions even though not relying on his evidence. I shall try first to indicate once more my doubts about the decision and then to clarify the difference between social science and Professor Clark's doings.

INTENDED AND ACTUAL EFFECTS OF *Brown v. Board of Educ.*

The Court's intention in the *Brown* case was to end the humiliation and the attendant psychological damage to Negro children found to inhere in segregation. Will the means the Court has chosen accomplish this end? Will the prejudice which inflicts humiliation on Negroes be disminished? Events seem to have confirmed my original guess that the Court's action will turn out to be a very mixed blessing.

It is often assumed that prejudice springs from ignorance and is reduced by knowledge and contact. This is certainly the case if the prejudice has no source but misinformation. Yet, misinformation often is the effect and not the cause of prejudice which itself springs from a variety of social and psychological sources. Information, or contact, is no cure where misinformation is the effect and not the cause of prejudice. The slaughter of the Jews in Germany was not due to ignorance or preceded by segregation or avoided by contact. In times past, hundreds of thousands of harmless old women were burned as witches. The people who accused them of being witches, who saw them riding through the air, etc., were their neighbors, villagers who had known them long and well. Clearly, contact produces as much as it reduces prejudice. And divorce cases suggest that even prolonged and intimate contact can produce hostility, contempt and prejudice just as well as affection, respect and knowledge.

Much depends upon the conditions in which the contact takes place. Now, the imposition of congregation by the Court in Washington will hardly make the local white children compelled to go to school with Negro children (or their families which influence them) receptive to the ideals to be fostered; nor will the circumstances help them perceive the actual individual Negro as distinguished from the stereotype, or generate the open mind and the warmth the new schoolmates want. One need not be a psychologist to see that many, even of the previously indifferent or well-disposed, are likely to turn against the

Negroes: Southern resentment of the imposition is likely to be shifted to those supposed to benefit from it. Is it less damaging for the Negro children to go to school together with resentful whites than separately? I cannot imagine that being resented and shunned personally and concretely by their white schoolmates throughout every day would be less humiliating to Negro children than a general abstract knowledge that they are separately educated because of white prejudice. Curiously, social scientists, with rare exceptions, are not very interested in investigating the effects on Negro children of going to school with hostile whites. Desegregated education is supposed to work almost magically — hence no need to investigate actual effects.[8]

The Court's view that "segregation with the sanction of the law" is humiliating is doubtlessly true under the historical circumstances. But the implication that such segregation is *more* humiliating than congregation by legal compulsion is a *non sequitur;* yet no independent evidence or argument supporting it was offered. Since the Court's stated purpose was to extend constitutional protection against humiliation and is presumed effects, it seems to me that the Court should have asked itself whether — given its duty to extend such protection — it was effectively doing so. As it is, quite possibly the Court prescribed a *medicinam pejor morbus,* intensifying the humiliation it meant to eliminate.

DOES THE CONSTITUTION REQUIRE COMPULSORY CONGREGATION?

The constitutional duty shouldered by the Court to protect against presumed psychological damage arising from humiliation inflicted by legally sanctioned separation raises additional questions. Suppose it were shown that white children feel humiliated by legally sanctioned congregation and that their suffering tends to impair their personalities. If the Court did not feel that their constitutional rights were violated, a distinction between constitutionally permissible and impermissible humiliation (and personality damage) must have been made. How? In terms of intent? Or is humiliation by disjunction always wrong and by junction never? The Court's present decision

8. Similarly, at times, social scientists simply have assumed damage by segregation to all concerned — Negroes or whites — on the basis of nothing more than their own prejudices. See Cahn, *supra* note 5. Exceptions by a number of social scientists are cited in the appendix to appellants' brief in Brown v. Board of Ed. Their effort seems more well-intentioned than scientific; *inter alia,* it does take Professor Clark's "evidence" quite seriously. In view of the high scientific standing of many of the signers, it is likely that they were not actually familiar with this "evidence." The discussion below will suggest why this is the most charitable interpretation — though it scarcely increases one's confidence.

does not shed much light on the question; it does not, therefore, avoid the impression that the Constitution makes togetherness compulsory in public institutions if one of the parties feels disturbed by segregation.

It is mainly the compulsory feature that makes me uneasy. Professor Clark writes:[9] "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.'" He concludes that I "did not read or did not understand" the decision. This allegation seems inspired by the following passage.[10]

> "The Supreme Court's decision did not deny that segregated facilities, equally good in all material respects, might be offered to all groups. But material equality, the Justices now hold, is not enough. The equal protection clause of the Fourteenth Amendment and the due process clause of the Fifth Amendment are found violated whenever, by means of segregating the members of a group in public facilities, the government intends to impose (or maintain) an inferior status for the group. The Court had little doubt that this was the intent or that the segregated Negroes felt slighted and were thus hurt.
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> "Had the Court outlawed only the compulsory segregation of groups legislated by many Southern states, it would have extended freedom of association hitherto denied those Southerners of both races who wanted their children in mixed public schools. But the 1954 doctrine goes beyond prohibiting *compulsory segregation* to replace it with *compulsory congregation.* The Court, to increase freedom of association, curtailed freedom of dissociation. The Fourteenth Amendment was interpreted to mean that no group has the right to be separated from another on public property when the other's pride is hurt thereby.
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> "If the pride of one group is hurt by compulsory segregation, the pride of the other might be hurt by compulsory congregation. The pride of the group resisting congregation, the Court must have felt, is arrogant and snobbish and rests on a feeling of superiority undeserving of public protection. Whereas Negroes were found deserving of protection when they resist being stigmatized as inferior, injured in their pride, by segregation. Thus, not only are people equal before the law; the law now actively prevents one group from stamping another as inferior by refusing to open public facilities to common use.
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> "The Court's decision has the defects of its virtues: it attempts to compel equal esteem of groups for each other. This attempt narrows, as well as enlarges, the right we each have to associate with whoever consents to associate with us and to dis-

9. Clark, *supra* note 5 at 237.
10. ROSS & VAN DEN HAAG, *op. cit. supra* note 2 at 163.

> sociate from whomever we do not care to associate with. Of course people can still send their children to private segregated schools. But this makes segregation a privilege of the rich. The snob value of segregation will be increased thus, as well as the resentment of the Southern 'poor whites,' who must use the public schools and are already a highly prejudiced group. Time will tell whether the Court overshot its mark — whether its generosity exceeded its wisdom."

I believe that it is fair to say that segregation is compulsory if imposed by law regardless of the wishes of at least one of the segregated groups; and, *eo ipso,* that congregation is compulsory if imposed by law regardless of the wishes of at least one of the groups concerned. Further, the purpose of the Court in decreeing compulsory congregation was to end a situation which (in the language of the lower courts cited with approval by Chief Justice Warren) denotes "the inferiority of the Negro group." I think it is fair and reasonable then to interpret the Court's mandate as compelling congregation in the hope of compelling "equal esteem" of the groups for each other. After all, the Court, though vague, did not suggest that congregation is a good per se; or segregation bad per se; it found segregation "inherently unequal" because of its humiliating connotations which congregation was to avoid. An alternative reading is possible, but would lead to very odd conclusions and deprive the decision of the rationale it is generally conceded to have. Hence, my opinion remains that, though the end be laudable, the means do not suit it; that compulsory congregation is objectionable and not the proper remedy for the at least equally objectionable compulsory segregation its replaces. The Court would have been on better grounds legally, morally and in terms of prospective effects had it outlawed compulsory segregation without replacing it with compulsory congregation.[11]

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11. VAN DEN HAAG, EDUCATION AS AN INDUSTRY appendix B (1956): "People have a right to be prejudiced and intolerant, although one has a right to persuade them to truth and tolerance, and educators have a duty to do so. But no one has a right to *impose* his prejudice and to injure others through his intolerance. Laws permitting segregation must be distinguished from laws making segregation (or non-segregation) compulsory. The former increase, while the latter decrease freedom.

"There should be schools for whites, schools for Negroes, and schools which both can attend, just as there are colleges for males, females, and coeducational ones. As any man or woman may choose a college restricted to his (or her) own sex, or one attended by both, so any white or Negro should be able to choose freely a school attended by those of his own group alone, or one where attendance by both groups is permitted. Neither the legal enforcement of segregation or compulsory congregation — the outlawing of segregation — are consistent with freedom. No Negro (or white) ought to be compelled to attend an exclusive Negro (or white) school, but any Negro (or white) ought to be allowed, if he wants to. Whether the school chosen by the student (or the school which has elected to accept him) is 'white',

ILLITERACIES, IRRELEVANCIES AND INACCURACIES

Professor Clark is sure that an analysis which comes to conclusions differing from his own cannot be based on "direct knowledge of the facts" and is due to failure to "read" or "understand" the relevant material. This accusation is levelled against me whenever I differ from Professor Clark, be it only in phrasing. Nor am I the only victim. Thus, Edmond Cahn wrote:[12]

> "Moreover, if affronts are repeated often enough, they may ultimately injure the victim's backbone. We hear there are American Negroes who protest they do not feel insulted by racially segregated public schools. If there are any such Negroes, then they are the ones who have been injured most grievously of all, because segregation has shattered their spines and deprived them of self-respect."

Professor Clark comments as follows:[13] ". . . 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'." This comment has the merit of throwing into bold

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'mixed', or 'black', it should afford educational opportunity equal to that of the school forsaken for 'racial' reasons.

"Should Negroes (or whites) not elect to attend schools restricted to their 'race,' these schools would disappear and only mixed ones would survive. But that would happen only as prejudices are overcome, not as a result of legal compulsion. Neither Negroes nor whites should be compelled to associate with each other, but both should be free to. This implies that either group may on occasion reject association with the other. It is true that if one wants to associates with someone and is rejected, it hurts. But would it hurt less to be tolerated by legal compulsion? To this possible pain we all must adjust ourselves throughout our adult life — and if segregation at times seems silly, the demand for compulsory nonsegregation is more silly. The right to freely associate with, or disassociate from, each other is a basic constituent of freedom even if the use made of this right is at times snobbish, silly or misinformed. Should schools which exclude whites (or Negroes) survive, they will do no more harm than the survival of Smith or Amherst — although we must admit that the reasons for the segregation of races are even less logical than those for segregation of sexes.

"Many believe that although the foregoing argument is correct, putting it in practice would be too expensive for the communities likely to want separate schools in addition to mixed ones which would become obligatory if separate facilities are provided. The mixed schools would accommodate the group which does not wish to be deprived of association with 'races' other than its own. It is true that the triplication of facilities (which is not always required; the same facilities may be used separately at times) involves considerable extra expense. But in a democracy, a community has the right to decide whether it wants less education *per capita* and lower taxes, or more education and higher taxes, and also whether it wants less good (but equal) facilities, for the sake of the desired separation; just as it has the right to decide on more beer and less education if it wishes. We may try to persuade people not to take that decision; but we may not compel them."

Events have convinced me that the Court's decision is not likely to achieve more actual congregation than my proposals would have. Possibly less. And having caused much resistance, the decision might well delay even this result and in the process intensify hostilities all around.

12. Cahn, *supra* note 1 at 158-59.

13. Clark, *supra* note 4 at 232.

relief Professor Clark's reading comprehension of straight-forward prose, including a simple metaphor. Otherwise its relevance eludes me. Indeed, much of Professor Clark's paper altogether leaves me baffled. He is curiously insistent throughout on matters the relevance of which is asseverated, but never explained. Thus:[14] "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.' "

Now, if that be an error, wherein it would be "crucial" or at least important or relevant we are not told. No argument whatever was based on the difference between "dolls" and "drawings of dolls." But, worse, the "crucial error" is no error at all. Edmond Cahn[15] quotes Professor Clark's sworn testimony in the South Carolina case: ". . . I used these methods which I told you about — the Negro and white dolls —. . . . And, I presented them with a sheet of paper on which there were these drawing of dolls, and I asked them to show me the doll. . . ." In short, Professor Clark in his testimony used "dolls" and "drawings of dolls" interchangeably. Cahn's inference that in the Sourth Carolina case, drawings were involved seems entirely proper and I followed it, only to be accused of "crucial error"! Yet none of my arguments would be changed if "drawing" were replaced with "dolls." I mentioned previous experiments by Professor Clark,[16] and there I referred to "the rejection of colored dolls by Negro children." Thus, I never committed the "crucial error" of which Professor Clark accuses me and which is neither crucial nor error; and Edmond Cahn's "crucial error" consisted in his having quoted Professor Clark. All this is certainly odd. Professor Clark's complaint that I failed to note his previous doll study[17] is odder still: I cited it on the very page from which he quotes me.[18]

PROFESSOR CLARK ACTUALLY "PROVED" THAT SEGREGATION MAKES NO DIFFERENCE

Professor Clark is right, however, in insisting that his trial testimony be viewed more explicitly in the light of his earlier study. Let me first briefly summarize the trial testimony. Referring to experiments performed at the request of counsel in the South Carolina case (testimony in the Delaware and Virginia litigations did not sub-

14. Clark, *supra* note 4 at 237.
15. Cahn, *supra* note 1 at 162.
16. ROSS & VAN DEN HAAG, *op. cit. supra* note 2 at 165.
17. Clark, *supra* note 4 at 239.
18. ROSS & VAN DEN HAAG, *op. cit. supra* note 2 at 165 n.35.

stantially differ), Professor Clark explained that he had shown Negro and white dolls (or drawings) to Negro children in a segregated public school and, having ascertained that they distinguished white from Negro people, asked them, in effect, which doll they preferred, and which one "looks like you." Ten (later in the testimony, nine) out of sixteen Negro children picked the white doll as the nice one, the one they "liked best"; seven picked the white doll as the one that "looked like you." Professor Clark concluded that "these children . . . have been definitely harmed in the development of their personalities."[19] He knew, of course, that the question before the Court was whether school segregation had harmed the children and testified: "my opinion is that a fundamental effect of segregation is basic confusion in the individuals and their concepts about themselves conflicting in their self images. That seemed to be supported by the results of these sixteen children. . . ."[20] The syntax is obscure, but the sense is not. Professor Clark testified (1) that segregation caused the harm he found (or at least played a "fundamental" role); (2) later on that this is "consistent with previous results which we have obtained in testing over 300 children"; (3) finally, "and this result was confirmed in Clarendon County." Elsewhere Professor Clark asseverated: "Proof that state imposed segregation inflicts injuries upon the Negro had to come from the social psychologists. . . ."[21]

Now to Professor Clark's previous results referred to above. 134 Negro children in segregated schools in Arkansas and 119 Negro children in unsegregated nursery and public schools in Springfield, Massachusetts, about evenly divided by sex, were involved.[22] Negro and white dolls were presented, and the children were asked to indicate the "nice" and the "bad" one, as well as the one "that looks like you." Professor Clark concluded that ". . . the children in the northern mixed-school situation do not differ from children in the southern segregated schools in either their knowledge of racial differences or their racial indentification"[23] except that ". . . the southern children in

19. Quoted in Cahn, *supra* note 1 at 162.
20. *Ibid.*
21. Cahn, *supra* note 1 at 159-60.
22. The children ranged from 3 to 7 years in age; these tested in Clarendon County were between 6 to 9 years old. Professor Clark does not seem to think that the difference in average age affects the results and I have no reason for disagreeing. But, both in view of the difference in average age, and the small size of the Clarendon group, I follow Professor Clark in comparing the two groups described in his previous tests with each other, rather than with the Clarendon group. Since it is possible after all that the effects of segregation vary with age, particularly with length of schooling, competent studies should take this into account. With an older group, Professor Clark's results might have been different; but I do not presume to know.
23. Clark, *Racial Identification and Preference in Negro Children,* READINGS IN SOCIAL PSYCHOLOGY 174-75 (1947). (Newcomb & Hartley eds. 1947).

segregated schools are less pronounced in their preference for the white doll, compared to the northern [unsegregated] children's definite preference for this doll. Although still in a minority, a higher percentage of southern children, compared to northern, prefer to play with the colored doll or think that it is a 'nice' doll."[24] The tables presented by Professor Clark bear out his conclusions. Table 4,[25] moreover, shows that a higher percentage of Negro children when asked "give me the doll that looks like you" gave the white doll in the nonsegregated schools — 39 percent as opposed to 29 percent in the segregated schools.

I am forced to the conclusion that Professor Clark misled the courts. Whether it be granted that his tests show psychological damage to Negro children, the comparison between the responses of Negro children in segregated and in nonsegregated schools shows that "they do not differ" except that *Negro children in segregated schools "are less pronounced in their preference for the white doll" and more often think of the colored dolls as "nice" or identify with them.* In short, if Professor Clark's tests do demonstrate damage to Negro children, then they demonstrate that the damage is *less* with segregation and *greater* with congregation. Yet, Professor Clark told the Court that he was proving that "segregation inflicts injuries upon the Negro" by the very tests which, if they prove anything — which is doubtful — prove the opposite!

I suspect the NAACP lawyers did not know, and were not told, that the only thing Professor Clark has proved is that, if there is damage, it is not due to school segregation. Else how could they present as an expert witness to demonstrate the damages of school segregation a man who has actually demonstrated only the damages of desegregation? Did Professor Clark know that his own previous tests indicate that according to his own criteria Negro children are less damaged by segregation than by congregation? That, in short, the conclusions he testified to were inconsistent with his own "previous results," although he testified that they were "consistent"? If he did, he deceived the Court deliberately. Perhaps Professor Clark did not remember; perhaps he did not understand. His comments noted above on the "shattering of spines" and the "crucial error" lend support to this hypothesis. If we accept it, we can maintain our confidence in the *bona fides* of the witness. But our confidence in the value of his testimony would be shattered altogether.

24. Clark, *supra* note 23 at 177.
25. Clark, *supra* note 23 at 174.

DID THE TESTS PROVE ANY INJURY?

There remains the question whether Professor Clark has demonstrated any personality damage — which could be caused by general prejudice in the community or by circumstances not affecting Negroes specifically. Professor Clark is confusing on the sources of damage, though he insists that segregation is "fundamental." Tests on white children, or on Jewish and Christian children, were not presented. Such tests would be needed to indicate whether the damage was general (there may be a general confusion of self images in our culture, a "crisis of identity") or restricted to minorities; or restricted to Negro children. That the damage is not restricted to segregated Negro children Professor Clark proved, if he proved anything, but did not tell the Court. But Professor Clark's evidence does not prove even that there is damage. For no proof whatever was presented to indicate that preference for, or identification with, a doll different in color from oneself indicates personality disturbance. I wrote on this point:[26]

> "Suppose dark-haired white children were to identify blonde dolls as nice; or suppose, having the choice, they identified teddy bears as nice rather than any dolls. Would this prove injury owing to (nonexistent) segregation from blondes? or communal prejudice against humans? Professor Clark's logic suggests that it would.
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> "Control tests — which unfortunately were not presented — might have established an alternative explanation for the identification of white with nice, and black with bad: in our own culture and in many others, including cultures where colored people are practically unknown and cultures were white people are unknown, black has traditionally been the color of evil, death, sorrow, and fear. People are called blackguards or black-hearted when considered evil; and children fear darkness. In these same cultures, white is the color of happiness, joy, and innocence. We need not speculate on why this is so to assert that it is a fact and that it seems utterly unlikely that it originated with segregation (though it may have contributed to it). Professor Clark's findings then can be explained without any reference to injury by segregation or by prejudice. The 'scientific' evidence for this injury is no more 'scientific' than the evidence presented in favor of racial prejudice. The cause of science as well as the cause of Negroes, is much better served if we simply stick to the facts: prejudice exists, it is painful to those against whom it is directed — we need only ask them — and not justifiable by any respectable argument, scientific, or moral. Let us

26. ROSS & VAN DEN HAAG, *op. cit. supra* note 2 at 165-66.

> try to eliminate it then. We need not try 'scientifically' to prove that prejudice is clinically injurious. This is fortunate, for we cannot."

Professor Clark, in his reply, ignores this rather specific argument and instead points out that I do accept Renee Spitz' findings on "hospitalism" even though based "on an unstated number of children," (as though the number of children was decisive). The conclusion that Professor Clark quotes me as making: "it is entirely possible that lack of maternal affection . . . deals a blow. . . ." does not seem to go beyond the evidence presented. But suppose I should be wrong on Spitz. Wherein would that show that I am not right on Clark? Spitz' findings and observations have no bearing whatever on Professor Clark's. The relevance of the matter wholly eludes me.

CONCLUSION

From Professor Clark's experiments, his testimony and, finally, the essay to which I am replying, the best conclusion that can be drawn is that he did not know what he was doing; and the worst, that he did.