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INTERACTIONS AMONG SCIENTISTS, ATTORNEYS AND JUDGES  
IN SCHOOL DESEGREGATION LITIGATION

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SUMMARY OF FINAL REPORT TO NATIONAL INSTITUTES OF EDUCATION  
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## Executive Summary

This report is the executive summary of a 2-year project funded by the National Institutes of Education (June, 1978 - September, 1980). The primary purpose of the project was to inquire into various aspects of expert social scientific testimony in school desegregation litigation. The central method involved interviews with social scientists who acted as expert witnesses, with attorneys, and with Federal District Court judges, in a sample of these cases. It was assumed that first hand conversations with scientists, attorneys and judges involved with the use of social scientific testimony, would shed light on scientist-attorney-judge interactions, and on the problems and opportunities of applied social science in the courtroom.

The principal investigators were Mark Chesler and Joseph Sanders, joined by Debra Kalmuss. Other core personnel included Pam House and Betty Rankin-Widgeon. This summary is a brief introduction to a much longer final report, currently under completion.

The project had its inception in a series of conferences addressed to the problems and roles of social scientific evidence in school desegregation cases. The scientists, attorneys and judges attending such events were clear and eloquent, but often talked past one another. Different actors were concerned with different issues in the process of litigation, and often had different notions of what constituted "evidence", "good court procedure", "goals of litigation", etc. The more we checked, the more it became clear that there was relatively little direct empirical evidence from key actors on the use of social science evidence in the school desegregation court cases.

Indeed there were prior investigations...and there was substantial commentary. One approach to social science testimony in litigative proceedings regarding school desegregation has focussed on the research itself. Various attempts have been made to conduct research, or to analyze and synthesize others' research on issues such as:

- the extent and causes of residential segregation,
- the relationship between residential segregation and school attendance areas/boundaries,
- the relationship between school desegregation and residential patterns (location or white flight)
- the effect of segregation on minority students
- the analysis of social factors associated with learning,
- the relationship between desegregation and achievement scores or other school outcomes

the existence of school practices harmful to desegregation,  
the role of school boards and officials in school segregation.

The list could be lengthened, as different scholars have proceeded with different notions of what might be relevant.

A second approach to the general question of social scientific evidence in desegregation litigation has involved the review of desegregation court cases to assess what evidence has been presented, and to review the quality or relevance of this evidence. For the most part, such research has been conducted by legal scholars, and their emphasis has been upon the existence and use of evidence, rather than its production, synthesis or evaluation.

A third approach has investigated the probable or actual impact of social scientific evidence on the court. Typically this has been done second-hand, by reading and analyzing court transcripts or written judicial opinions. In some cases, judges writing these opinions have commented directly on the quality or utility of the evidence they heard.

A fourth approach has been for scholars - legal or social scientific - to consider and elaborate the problems social scientists encounter in the courtroom. For the most part, these efforts have been conceptual rather than empirical in orientation, drawing on a long tradition in the sociology of knowledge to warn social scientists of certain pitfalls.

While we are interested in all these approaches, this study primarily deals with the fourth set of problems and issues. We have been concerned with the role dilemmas scientists face in giving expert testimony, and with the ways in which they deal with the potential conflict between scholarly norms and the legal-adversarial norms of the courtroom. Moreover, we have been concerned with the ways in which scholars, attorneys and judges interact with one another around scientific evidence. In this executive summary, however, we have not attempted a systematic and complete explanation of all the issues we have examined in the study. Rather, this summary reflects the central problems which have engaged our interest thus far. For instance, the discussion of social scientists concentrates on the dilemmas they face in giving court testimony, the discrepancies they anticipate and experience between social scientific and legal norms, and the degree to which these discrepancies create personal discomfort or role conflict. The discussion of attorneys, on the other hand, reflects a different set of issues. While lawyers may anticipate and experience some conflict between scientific and

legal norms, the courtroom is their home. The role dilemmas and conflicts scholars faced are not at the core of attorneys' relationship to social scientific testimony. For attorneys, a more central problem is how to conceive of and use (and counter the use of) scientific expertise in the court. While we have done relatively little with the judges' interviews, thus far, the summary includes a brief discussion of the ways in which witnesses and attorneys try to influence judicial decision-making, and judges' reactions to these strategies.

In addition, we have looked at a set of issues involving the interactions among lawyers, scientific experts and judges. These issues include the preparation of the expert, cross-examination, lawyers', social scientists' and judges' perceptions of the characteristics of the credible witness, and all parties' judgements about the value of moving to a different method of using this evidence - a court-appointed panel of experts.

All the material reported in this brief summary is treated in greater detail in the full final report.

#### Methods and procedures

In order to add to the existing literature on these topics, and to contribute to current dialogues regarding the role of social scientific testimony in school desegregation litigation, we elected to conduct a direct interview study of key actors in court cases where social scientific testimony was used. We reviewed all pupil desegregation cases active in Federal District Courts since 1970, and stratified these cases according to whether they occurred in: (1) the Northern-Western or Southern states; and (2) large cities or small cities and towns. We felt this stratification was necessary because different legal and evidentiary issues arose in cases in different regions (de jure v. de facto arguments, timing of cases, questions of intent or outcome) and in school districts of different sizes and civic boundaries (white flight and plan feasibility, metropolitanism, state and local culpability, etc.)

These cases also were screened to determine the ones in which social scientists had appeared in court...as witnesses and subject to cross-examination. The resultant pool contained 69 cases, and we finally selected from this pool a sample of 17 for intensive study. The sample was designed to maximize representation of cases from different regions and from cities/districts of

different sizes.

With this selection process completed, we reviewed court opinions, talked with key actors and otherwise attempted to build a list of scholars who testified in these cases, and of attorneys who litigated them for defense and plaintiff parties. We also utilized a snowball procedure to identify and include other scholars who had testified in any recent desegregation case, including those not in our sample. Thus, we broadened our sample of scholars, probably coming close to interviewing the entire universe of testifying scientists. Indeed, almost a year after concluding our interviews, we now know of about 10 scholar witnesses who we didn't try to interview because we missed them.

Since many cases contained multiple parties, and the parties themselves sometimes used several attorneys, we could not interview all the lawyers who worked on each case. In choosing which attorneys to interview, we always included at least one from each of the major parties to the litigation: at least one school board (defendant) attorney and one plaintiff (civil rights group or government) attorney. Where there was more than one plaintiff or defense group in the litigation (e.g. both the Justice Department and the NAACP, or school board and white parents' group) we interviewed at least one from each group. The choice of which particular attorney to interview partly was guided by a desire to include those lawyers who played a critical role in litigation at the trial level, and who had worked with the scientific experts in preparing the case.

Given the sensitive and often controversial nature of the issues we were investigating, we elected to use a face-to-face interview format with informants. As interviewers, we made sure to ask our questions in a relatively systematic and standardized manner. The conversations themselves, however, were anything but standardized. Different attorneys, judges and scholars had different perspectives and reactions to share; they also had different personal needs to share information and experiences that sometimes were painful and distressing, but always were intriguing and provocative.

In total, we interviewed 83 social scientists, 70 attorneys and 10 Federal District Court judges. Some of the interviews with social scientists were done over the telephone (6), principally because of problems of their time availability and access. Only two social scientists refused to be interviewed, although it is fair to say that perhaps 7 other interviews were done over

resistance or were otherwise too scanty to provide much information. Despite our pre-selection criteria, we discovered that some of the scholars we interviewed did not testify as expert witnesses in court; they either refused to testify (8), or acted in other roles than as a courtroom expert (8). Six attorneys refused or were consistently unavailable to be interviewed, and some of the interviews with attorneys also were conducted over resistance or in a scanty manner (18). Although the typical interviews with lawyers and scientists lasted an hour and a half, several turned into searching conversations lasting more than 3 hours. Full and complete interviews, they were conducted with 54 scientists and 52 lawyers, representing a good mix from plaintiff and defense parties.

About half the judges we tried to meet with refused to be interviewed. Some didn't have time available, and others felt it was inappropriate for them to discuss these cases ex parte. Of those 10 we did interview, 3 were quite brief or scanty. We were and are sympathetic with all persons' decisions not to be interviewed, or to be cadgey or cautious in their conversations with us. The controversial nature of school desegregation issues, the partisan environment within which the courtroom use of applied social science occurs, and the dangers of breaches of confidentiality surely mitigated against free and open discussions.

We asked scientists, attorneys and judges some different questions, because their roles in these cases were quite different. But the questions we addressed to all these actors centered around some common themes:

- what is desegregation school all about,
- what are the key legal issues in the litigation,
- what was your role in the litigation,
- how did you manage your role,
- how did you prepare for the case,
- what was the courtroom experience like for you,
- how did you deal with opposing attorneys or witnesses,
- what impact did social scientific testimony have in this case,
- what should be the role of scientific testimony,
- what conflicts did you experience in court.

In addition to interviews with key actors in these cases, we also read some transcripts of expert testimony and cross examination, some appellate briefs, summary arguments, and judicial orders and opinions. The interviews with actors represent the core of unique data for our study, and these other materials are used in the analysis and report as backup and illustrative material.

In analyzing these data, we often used extended interview material to describe courtroom dynamics and to give readers a "feel" for various actors' experiences and strategies. In addition, we used data in this format to conduct qualitative analyses that illuminated and extracted central themes in the courtroom management of these public controversies. We also carefully coded phrases and ideas expressed in the interviews in order to categorize attorneys and scientists on various dimensions. With such categorization, we were able to conduct quantitative analyses that explored differences among scholars or attorneys, and then between them, on selected issues. As will be clear later in this report, for some analytic purposes we looked at data from all persons in the sample; for other purposes we only analyzed data from people who had granted full and complete interviews.

Some data were analyzed in order to clarify within group differences. For instance, within the group of scholars, we examined differences in how plaintiff witnesses and defense witnesses responded to various issues, or how they selected from among competing roles and normative standards (scientific v. legal-adversarial). Other data were analyzed in order to clarify between group differences. For instance, we compared the ways lawyers and scholars experienced or evaluated certain testimony or styles of witnessing. And finally, some data were analyzed in order to triangulate any and all groups' perceptions of key issues. For instance, in trying to understand the criteria for a good witness or the relevance of a panel as a mechanism for providing scholarly testimony, we brought all groups' perceptions to bear on the problem.

#### Findings about key actors and roles

In this section of the summary report we discuss some findings relevant to each of the three groups of actors.

Social Scientists. Our experiences and readings regarding the use of scholars and scholarly research in school desegregation settings led us to conceptualize the following dilemmas facing most applied social scientists:

1. Political dilemmas: How does one manage the demands from and loyalties to competing interest groups when doing applied work involving multi-party conflict? When most of the scholarly reference group appears to be on "one side" of a conflict, what are the implications of being on the "other side"?



2. Psychological dilemmas: How does one deal with feelings of departing from the potentially internalized norms of one's profession and with the negative labelling associated with such practice? How does one create or find an alternative reference group to provide support for applied efforts?
3. Career dilemmas: How do scholars engaged in applied efforts obtain or maintain appointments in their academic disciplines and departments? How do scholars located in professional or applied schools or departments maintain legitimacy with their disciplinary colleagues? How do applied scholars get information about alternative role conceptions and stable alternative careers?
4. Skill dilemmas: How does one acquire the skills necessary for various kinds of applied research and action? How does one move beyond generating knowledge to communicating it effectively with lay people, to utilizing it or to facilitating others' utilization?

Not all scholars attempting to apply their knowledge in desegregation situations experience these dilemmas in equal regard. There is, in fact, a wide variety of applied roles currently played by scholars, and giving courtroom testimony is only one of them. Scholars also present findings to groups of educators, consult with school managers, design desegregation plans, teach teachers to teach differently, evaluate desegregation programs, organize minority groups to challenge school leaders, conduct research on innovative pedagogic efforts, and so on. Different roles encounter these dilemmas differently. The shape and intensity of these dilemmas vary along with the nature of the applied scientific effort (i.e. researchers generating scientific knowledge to serve the "public good" probably are faced with less explicit and intense dilemmas than those trying to advance the partisan interests of a particular party in a public controversy).

Presentation of testimony in court certainly challenges some existing norms of the social scientific community. Scholars appearing as expert-witnesses have elected to work outside of the academic setting, and enter into the resolution of a community controversy. Moreover, in most courtroom appearances they are required (whether they elect to or not) to appear on behalf on one party to a multi-party controversy. Thus, they encounter political dilemmas: regardless of their own commitment to neutrality, the objective situation in which they find themselves is fraught with political conflict between plaintiff and defense parties. Subjective resolutions of this conflict may lead some to adhere to norms of scientific neutrality even within the adversarial arena of

the courtroom. Others may strike a bargain between norms of advocacy and neutrality; still others may act forthrightly as an advocate of their party or of the local plan for desegregation or non-desegregation.

The institutional framework of the courtroom as an adversarial arena led us to ask the following questions about scholar witnesses:

1. Did experts anticipate discrepancies between scientific norms and legal adversarial norms? If yes, what are some examples of these anticipated discrepancies?
2. Did experts actually experience such discrepancies when they testified in court? If yes, what are some examples of these experiences?
3. Did experts who experienced such discrepancies report tension, discomfort or conflict (role conflict)?

The standards for "truth", "evidence" and proper behavior are not necessarily the same in the courtroom (where legal-adversarial norms prevail) as in the academic setting (where social scientific norms prevail). We wondered whether scholars anticipated these differences, as well as a need to choose among competing norms and roles. Moreover, even if they anticipated discrepancies, that did not mean they would actually experience or encounter them in the courtroom. What were their actual experiences?

Also, we wondered what happened if and when scholars did experience such discrepancies in court. Did they feel discomfort and tension - the indicators of role conflict - or not? Not everyone who experiences discrepant or apparently incompatible role demands feels uncomfortable or in conflict. It is possible to feel relaxed and at ease in such circumstances; it also is possible to organize or interpret one's experience in ways that avoid, overcome, or resolve potential conflict.

The data indicate that most scholars did anticipate incompatibilities or discrepancies between their scholarly role and the demands of the witness role. Moreover, 90% of the expert witnesses who actually testified reported that they experienced this incompatibility in the courtroom. Interestingly, they reported experiencing fewer incompatibilities or discrepancies than they anticipated, but the experience was widespread nevertheless. Some examples of these scholars' experiences with normative discrepancies are noted in the following excerpts from their interviews:

I did not present opposing evidence in court as I would with an academic audience. It was okay, because it wasn't my job to do that. It was the job of the cross-examining attorney to identify and question me about the evidence.

I would say things on the witness stand that in my real life I was not quite as sure of. But I was not engaged in a professorial dialogue. I was in the role of an expert and an expert is just not unsure. You omit all the qualifications one would give in the classroom or with colleagues. This is a different arena, you don't do that here.

What about role conflict? As table 1 indicates, over half (52%) of the expert witnesses who experienced such discrepancies reported no role conflict at all. Twenty three percent reported that all the discrepancies they encountered involved conflict for them. Twenty six percent indicated that they sometimes felt conflict when experiencing these discrepancies, and sometimes didn't.

Table 1: The extent to which normative discrepancies involved role conflict for expert-witnesses

	Discrepancies never involved conflict	Discrepancies sometimes involved conflict	Discrepancies always involved conflict
% of Informants	52%	26%	23%

Some examples of the kinds of role conflict expert witnesses felt in these situations are elicited in the interviews as follows:

I did not feel good in the X case, because I had pushed my data beyond its limits because of the adversarial pressures of the courtroom.

I always experience a certain amount of tension in the process of testifying. The conflict occurs between whether I am testifying for the people who hired me or whether I am a servant of the court and am simply supposed to answer questions, and however the questions come up, the answers will fall as they will.

Given strong evidence about the incompatibility and conflict between legal-adversarial norms and social scientific norms in the conduct of expert witnessing, we tried to understand how scholars decided which normative stance to take, or what mix of stances to act on. Interviews were coded for informants' statements about their courtroom behavior, and these statements were categorized into those reflecting adherence to social scientific norms and those reflecting adherence to legal-adversarial norms. Examples of specific behaviors coded in the social scientific category include:

1. Telling the whole truth and not omitting evidence that might harm one's side.
2. Qualifying statements in terms of generalizability, degree of certainty and the degree to which they are based on established social science knowledge.
3. Constraining one's testimony to one's area of expertise.
4. Constraining one's testimony to hard facts or data.
5. Securing approval from one's lawyers to adhere to one or more of the above norms in court, before agreeing to testify or while formulating one's testimony.

The following reported behaviors were coded as reflecting legal-adversarial norms:

1. Volunteering only the part of the truth that supports one's side.
2. Omitting opposing evidence.
3. Omitting mention of problems or flaws in one's data.
4. Scanning the data and selectively presenting the portion that most strongly supports one's side.
5. Not fully qualifying one's statements.
6. Presenting opinions or positions before one feels all the research on the issue is in.
7. Including statements that are not based on social science research or data.
8. Attempting to dodge questions, score points or impeach whatever points the opposing attorneys raise in cross-examination.

An index score of each informant's comments about his or her behavior was computed, and Table 2 presents the resultant distribution of their normative stances. The table indicates that more than half the informants were totally consistent in their approach (36% were totally social scientific and 24% totally legal-adversarial). Moreover, about half (52%) the informants could be identified as primarily social scientific, because 75% or more of their statements fell in that category; while 34% could be identified as primarily legal-adversarial.

Table 2: Expert-witnesses' Adoption of Social Scientific or Legal-Adversarial Norms

Percent of Reported Behaviors Indicating Adoption of Social Science (Legal-Adversarial) Norms

	100% Social Science (0% Legal- Adversarial)	75-99%	50-74%	24-49%	1-25%	0% Social Science (100% Legal- Adversarial)
% of Respondents	36%	16%	10%	4%	10%	24%

It appears that those scholars who elected a legal-adversarial stance in court experienced less role conflict than those scholars who elected a social scientific stance. The factors influencing this relationship are multiple, and are explored in the following pages, as well as in more detail in the fuller report. However, an overriding issue seems to be the general situational press of the courtroom. Regardless of scholars' training and normal professional practice, the courtroom is structured in a manner that supports and encourages legal-adversarial norms. As a result, the most comfortable actors in court were those who abided by legal-adversarial norms. However, scholars who elected a social science stance in court did not universally experience role conflict: a number of these experts also reported no conflict. In this context we raise the question of whether the courtroom is really quite as adversarial as previously imagined and whether some of the roots of such conflict lie in the academy itself.

Another kind of conflict many scholars reported is related to disparity between their own political stance and that of the party for whom they testified (party conflict). This political conflict appeared to be prevalent among witnesses testifying for defendant school boards, but not among scholars testifying for plaintiff civil rights groups. Over three times as many defense as plaintiff scholars mentioned such conflict (62% v. 14%). The following comments from defense experts illustrate these feelings.

There was some sense of ideological conflict because I had always identified myself as a liberal and I was testifying on behalf of school boards who were generally pointed to as culprits in these things.

I was in conflict because the party on the other side was the NAACP and I had been a member of that organization. I felt there but for the grace of evidence go I, on the other side. And it was disconcerting...I approached it with trepidation because of my liberal learnings.

These defense experts described their own political stance as similar to that of liberal and pro-civil rights plaintiff groups, and they labelled school boards as conservative. The disparity between their own political orientation and the one they ascribed to the party they represented was the source of their political or party conflict.

In a similar vein, some plaintiff witnesses who did not accept the traditional liberal frame of desegregation also experienced such party conflict, although not with the intensity as the defense witnesses.

School desegregation is from my perspective extra-ordinarily complex and fraught with ambiguities. Whether it's beneficial, the conditions under which it can be beneficial, whether these conditions can be realized, in simple terms, whether it's a good or bad thing, I can't answer that. The school board isn't the side I generally favor in school desegregation cases. But the government side isn't something I can enthusiastically support either.

Another variant of political conflict stemmed from the discrepancy between one's courtroom stance and the general political stance of one's profession and professional colleagues (professional conflict). It emerged when witnesses felt their colleagues disapproved of their party affiliation and expressed that disapproval in material and status sanctions. Obviously this scenario presented scholars with career as well as political dilemmas. Why should party affiliation be a source of sanction within the academic community? One explanation is that the academy's aggregate trend toward liberal political attitudes creates a norm or implicit assumption of "liberalness." Several scholars have noted that pressure, censorship and suppression all have been applied to academics whose work is not consistent with the assumed liberal posture of the academic community.

Admittedly, our only route to analyzing these feelings is through scholars' self-reported perceptions or anticipations of the consequences of their acts. Although these may be self-serving commentaries, they increase our understanding of the larger academy's role in the partisan politics of courtroom and community. As might be expected, the data indicate professional conflict was substantially more prevalent (71% v. 14%) among defense experts than among plaintiff experts.

If defense experts were uncomfortable with, or anticipated, career costs for their particular party affiliations, how did they deal with these political conflicts? Why did they testify in the face of these apparent pressures? Some defense experts stressed "higher order justifications" that overrode the discomfort and costs associated with their party role. For instance, the professional obligations to disseminate data neutrally and to use data to inform public policy were reported as encouraging action without regard to partisan considerations or consequences. Other defense experts differentiated the particular parties of the case(s) from the general liberal classification of school desegregation litigants. For instance, they distinguished the school boards for whom they testified from the larger category of conservative and racist defendants, and they distinguished the plaintiffs in their particular case from the general category of liberal and pro-civil rights groups.

Expert witnesses thus reported a number of dilemmas and conflicts involved in the provision of court testimony. In this brief section we have summarized two of these issues: (1) psychological dilemmas and role conflicts associated with incompatibilities between social scientific and legal-adversarial norms, and; (2) political dilemmas and conflicts associated with the alignments of various parties in a case, and with one's scholarly community or referent group.

Attorneys. Conversations with attorneys indicated a more strategic view of the use of social science evidence, and a greater comfort with the appropriateness of the adversarial situation to achieve truth and resolve community problems. A number of attorneys, however, suggested that the desegregation cases really were "not justiciable", and should not be settled in the courtroom. The problem of an appropriate arena for resolving cultural or political conflict in the community was a central theme in the attorneys' interviews.

Plaintiff and defendant attorneys used social science testimony quite differently. For instance, most experts at the violation stage of a trial were employed by the plaintiffs. Table 3 indicates that in the 17 cases in our core sample, plaintiffs used fourteen different experts at the violation stage while defendants used only five. Moreover, counting individuals substantially underestimated this difference, because a few plaintiff witnesses testified in numerous cases, while defense witnesses rarely testified in more than one or two cases. If we count person-appearances rather than persons we find there have been approximately 33 person-appearances for plaintiff experts and only 7 person-appearances for defendant experts. Finally if we use cases as the unit of analysis, in 11 of the 17 cases plaintiffs presented experts at violation, while defendants presented experts in only three.\*

Table 3: Plaintiff and Defendant use of Academic Experts at Violation in Seventeen Cases.

	Plaintiff	Defendant
Number of Different Experts	14	5
Number of Person-appearances by Experts	33	7
Number of Cases in Which Experts Appeared	11	3

\*In the remaining 3 cases no experts were presented at the violation stage; they appeared only at remedy. At the violation stage of a trial the key questions usually are whether a constitutional principle was violated and, if so, by whom. At the remedy stage the key questions are what shall we do to correct this violation (and its impact).

Why were plaintiff lawyers so much more likely than defense lawyers to use academic social scientists at the violation stage? First, plaintiffs had easier and broader access to experts. Second, plaintiff and defense lawyers had differing conceptions of the litigation, which caused them to evaluate the utility of experts quite differently.

Defense lawyers reported it was relatively difficult to find social scientists willing to testify for their side. They perceived a bias within the academic community, which resulted in high costs to any academically based expert willing to testify for a school board. They mentioned occasions in which both prominent and lesser known experts refused to testify, due to their fear of its effects on collegial associations or job prospects. According to one lawyer for the defense:

(Expert X) was one of the few people who would be willing to talk to us even though we were on the 'wrong side'. It's not fashionable to be defending these lawsuits. It's fashionable to be on the other side. After talking to one or two of the local sociologists, we did not find somebody who would go along with us. We would find people who, because of peer pressure, did not want to testify for the defendant regardless of what the facts were or anything else...

This perception of the social scientific community's internal pressures is quite consistent with earlier comments by defense scholars concerning their anticipated or actual professional conflicts.

In addition, plaintiff lawyers over the years have developed a cadre of "repeat players" who testify in many cases: thus they did not always have to repeat the difficult task of determining what each social scientist had to offer and then preparing him or her for the witness stand. Defense lawyers, on the other hand, often started from scratch in each trial, attempting to recruit a person with whom they had never worked. In recent years this difference has narrowed, and in a few cases a well-organized repeat team of experts has appeared for each side. Differential experience with the desegregation cases, and with social scientists in particular, had another effect. The defense lawyer may not have been sure exactly what testimony he or she wanted. It takes time to understand the full potentials within a body of law and the ways in which social science testimony may prove useful. Defense lawyers, who may be local generalists without civil rights experience, often had limited time for reflection and conceptualization of these particular aspects of the law and of the school board's position and strategy.

The second unique aspect of social science testimony at the violation stage is that most of the evidence was not directly relevant to whether or not the school board had intentionally segregated students on account of race. In southern cases,



the existence of statutes and constitutional provision requiring dual school systems was proof of this point. In northern cases, however, the state government usually had no such provisions (or had none for 60 years or more), and there was no announced policy of segregation by school boards. In the absence of admissions of segregative purpose, plaintiffs had to provide testimony which examined the acts of a school board and imputed to them both a segregative purpose and effect. However, while this may be the evidentiary issue on which such cases might turn, almost none of this evidence came from social scientists. Of all the scholars we interviewed who testified at violation, only two testified to the segregative purposes and effects of discrete school board actions. Rather, most testimony appeared to address the educational and psychological consequences of school segregation and desegregation, and the nature and causes/effects of residential segregation. The latter issue was only indirectly and generally relevant to the probative issues.

What then were attorneys' intents and foci in using scholarly testimony? Plaintiff attorneys indicated two strategies for the use of scientific expertise: (1) undermining the defense, and (2) educating/persuading the judge. The first strategy developed when plaintiff attorneys anticipated that board lawyers would contend that officials' actions were in pursuit of a racially neutral neighborhood school policy. Testimony about housing segregation undermined this defense because it established the context (of institutional racism) within which even "neutral" acts took on racial meaning and impact. For instance:

Part of the reason we need to use these people is to anticipate the defense. The defense generally has very little to say other than "they haven't done it". So, part of what we present with social scientific testimony is "the board of realtors have done it", "the governor's office has done it". If everyone else has done it, how can it be reasonable that in the same time frame the educational institution wasn't doing it. It's a tactic to beat them before they can even come in and say it.

The second rationale for using scientific experts was to sensitize the judge to the general state of race relations in America. This enlightenment approach to scientific influence on policy making did not need to be directly probative to be both educational and persuasive.

Defense attorneys were principally concerned with defending against allegations or proof of discrete and intentional acts of school board segregation. Moreover, they generally did not have an agenda of broadly educating the judge to new (or old) realities of race relations in the United States. Thus, defense attorneys shared neither of these plaintiff attorneys' rationales for using social scientific

expertise in court. When they did use scientists at the violation stage of a trial, the rationale appeared to be to counter the "credibility gap" created by several renowned social scientists appearing for the plaintiff party. At the remedy stage, an increasing number of defense witnesses sought to demonstrate that a desegregation plan is neither effective (in equalizing educational outcomes) nor feasible (in terms of mixing races in an increasingly minority school system).

Judges. As indicated earlier, roughly half the judges we wished to interview were not available or refused to be interviewed. The several that we did speak with were, nevertheless, quite helpful. As judges dealt with desegregation, they were subject to a variety of specific attempts to influence them, to direct their decision in one or another direction. The data indicate that litigants (plaintiff and defense), local community groups, elites, friends and neighbors, fellow judges and others, used various strategies to influence the outcome of these desegregation-related controversies.

One influence strategy that is relatively invisible or covert occurs when judges collaborate with plaintiffs or defendants because of (and through) previously existing commitments, associations, and/or identifications. Sometimes this process of collaboration is conscious and deliberate; at other times it is unconscious, and results from common backgrounds, common interest group associations or similar ideologies. In the course of litigation, steps were taken whereby the judge's previously existing views were strengthened and acted on in court. For instance, as part of the prevailing elite of the local community, judges gathered together with other members of the elite at the apex of the community's educational, human service, social control, political, industrial and financial systems. These gatherings may have been enhanced by overlapping membership in various civic organizations or social groups, such as country clubs. Local foundations or governmental agencies also planned events at which judges and attorneys, and other elites, discussed ways in which social peace and progress could be maintained in their community. In a more overtly partisan manner, civil rights groups or their governmental allies have created conferences which brought together judges, attorneys and social scientists to "discuss" desegregation-related issues and concerns. Generally these conferences were "stacked" with pro-desegregation personnel. Defense attorneys, school board officials and national groups opposed to desegregation litigation also may have called "educational" conferences to share their views and ideas, and potentially to create the basis of a collaborative relationship.

The strategy of exerting influence through collaboration generally focusses on ways to strengthen judges' pre-existing views. Pre-existing views also may be altered through personal conversion. This influence strategy attempts to change a judge's view of the local situation, or of the evidence for violation or remedial matters, or of the relative ranking of various factors or variables in a case. Conversion refers to the process of both rational (cognitive) and emotional (affective) changes in views which occur as a function of education (re-education) or enlightenment. It can affect a new world view, a new conception of factual matters, or a new notion of cause and effect relations in complex social situations. Several judges indicated that social scientific expertise delivered in the right manner was very persuasive in these regards:

I thought segregation was an incidental question until I began to learn something about it from the testimony. In fact, the schools were still badly, well almost completely, segregated. It was these facts, not opinions, that were important. It took several months of studying to recognize that, as far as race was concerned, all these things took place with the action of the state, county, city, school board and federal authorities.

I think its true (that part of their job is educating the judge). Of course blacks have suffered some systematic and institutionalized racial animus. If you had someone on the bench who doesn't have this kind of knowledge, I would want to make sure if I were plaintiff's counsel in an important case like this that the judge is thoroughly familiar with racial problems in a large city.

Another strategy to influence the judicial decision is coercion, an attempt to alter behavior rather than views. Certainly there are limits to the use of coercive tactics with regard to the federal judiciary: judges' power, their power to strike back, their insulation, and their lifetime appointment all mitigate against this strategy. However, it is clear that coercion has been used and could be successful for plaintiff or defendant interests. Some coercive tactics were legitimated within the judicial structure: they included recusals, and successful appeals and reviews. Thus, in some cases the Supreme Court or Circuit Courts of Appeals overruled a District Court Judge, and required him to rewrite his order to result in a different sense of violation or a different remedy. In addition, social coercion may have occurred when people in the local community took action against a judge who made, or was about to make, an unpopular decision. Several of

the judges we spoke with discussed ways in which their former friends and neighbors ostracized them and their families. Moreover, local strangers sometimes made threatening phone calls, desecrated their residences, and otherwise harassed and attempted to coerce them.

Findings about key courtroom issues.

In addition to our analysis of the experiences of various actors, we investigated how these actors viewed a number of common issues or phenomena in the process of school desegregation litigation.

Preparation for testimony. How did attorneys know (or ensure) that the testimony their witnesses gave would be relevant to their case? Would it aid the case instead of destroying it? How did a scholar find out what was expected of her or him? How did s/he learn how to aid her or his party, instead of making it more vulnerable? No attorney who had carefully constructed a case wished to jeopardize it by using unknown scientists giving unknown testimony in incompetent ways. By the same token, no scientist wanted to participate in a scene in which he or she felt and acted inadequately and was humiliated. Thus, a period of mutual preparation was necessary. How did attorneys and witnesses prepare for expert witnessing?

Attorneys and scientists identified three major objectives of preparation for testimony: psychological, strategic, and factual. Psychological preparation involved familiarizing experts with the nature of the courtroom and the adversarial process and their own role requirements. A lawyer and a scholar commented on this form of preparation, respectively:

It's a matter of preparing them for what the process is, and then giving them techniques that assure their survival and survival as a whole person within the context.

Especially in the beginning (my lawyer) would try to explain the rules of evidence and my freedoms and lack of freedoms when I'm on the stand. In effect, he would train me in the process of being a witness, which I needed in the beginning.

Strategic preparation consisted of discussions or negotiations between lawyers and experts about the theory of the case and/or the nature of the testimony to be offered.

I was involved in overseeing, advising and consulting on what kinds of data to get, how to put the data together. We had lots of sessions on what kinds of legal issues did they want to make and then we looked at what kinds of data were available.

There are a number of issues in school desegregation cases that lawyers don't see that a good expert ought to see. If an expert is worth his or her salt in any kind of litigation, they ought to be able to point out areas that lawyers can cover in legal terms.

We negotiate. The lawyers say here's the points we would like to make. We are looking for an expert witness who would speak to this kind of testimony. I say, "Well, I can go this way but I can't go that way." It is very honest and straight-forward. The lawyers understand about roles pretty well.

Factual preparation often occurred as part of these strategic negotiations: it involved lawyers educating experts about the legal issues and local specifics of the case and scholars making sure they knew their own and related work. As lawyers noted regarding scholars:

Make sure he is just as familiar as he can possibly be with the school district because that is one thing that school board people often dwell on, is that this person is an outsider, right? So he has to be as familiar as possible with the school district. The Court will take an opportunity to disallow an expert's testimony on that basis.

Similarly, lawyers prepared themselves factually for their witnesses:

We reviewed extensively everything they had previously written.

We would make sure that we understand (our expert's) exhibits and the general principles behind the research.

In addition to providing various kinds of advice, lawyers proceeded with preparation of their witnesses according to other techniques. Some attorneys gave their prospective witnesses transcripts of other witnesses' depositions or copies of court testimony. Other scholars sat in the courtroom to hear expert testimony, learning from first hand observations what they might encounter. In addition, some scientists reported they talked to their colleagues who had testified, and asked them what it was like in the courtroom. Efforts to role-play the actual testifying scenario also were reported by several scholars and attorneys.

The conduct of cross-examination. Most experts and attorneys perceived the basic purpose of cross-examination in partisan or adversarial terms: to help win the case. Some related this theme to the legal process of achieving "truth"; by the important judicial review of each side's best case. In general, the major strategy attorneys utilized in the effort was an attempt to discredit the expert-witness. As several scholars and attorneys noted:

The opposition's first step is to discredit the so-called expert, to get him to trap and discredit himself.

The purpose of the cross-examination is to destroy the credibility of the witness.

The lawyers are trying to make you look bad and less competent than you are. They will try and make you contradict yourself, and will try to discredit you personally if they cannot discredit your social science data or testimony.

In the longer final report, we analyze court transcripts which demonstrate the ways in which cross-examining attorneys used the following specific tactics to challenge witnesses' credibility.

- challenging witnesses' academic credentials
- challenging witnesses' locally relevant expertise
- implying special interests in the case
- implying bias in personal views
- searching for admissions of legitimacy of opposing views
- exposing contradictions or errors in testimony

What is a good witness? The basis of a good witness is one who is, or who appears, credible in court. Two major categories of attributes or role behavior stood out in the reports of scholars, attorneys and judges: expertise, or matters of technical knowledge; and expertness, or skills and tactics of presentation. Some of the specific attributes or behaviors noted in each of these major categories are presented in Table 4.

Table 4: Characteristics of a Good Witness, as reported by attorneys and scholars

Expertise

- Have good credentials
- Have good data/experience
- Know the local area

Expertness

- Communicate clearly/specifically
- Don't use jargon or highly technical materials
- Stay within area of expertise
- Admit ignorance or weakness\*
- Don't be adversarial
- Maintain integrity
- Don't get rattled or hesitant
- Be courteous and dress nice
- Respond to questions

The greatest difficulty in matters of expertise was social scientists' lack of knowledge about the local area. Scholars often were unprepared in this area because their expertise and reputation generally were built on precisely the reverse criterion -- the ability to create more generalizable and abstract knowledge from various data sets. Aside from this difference, attorneys for both parties generally screened their experts carefully for their technical qualifications, credentials and reputation. Thus, much of the variation in witnesses pertained to matters of style or performance (expertness). The arbiter of these considerations was the judge, to whom the witness must appeal. Judges commented on some of the factors noted above.

I just wasn't impressed with the evidence generally because its in such a hypothetical form, and we're talking about "if this" and "if that". Maybe I didn't understand it as well as I should, but I thought I understood it and I just thought the whole idea created too much uncertainty, and I just wasn't impressed with the evidence.

Credibility comes from a balanced approach. Where every answer supports the person who hired (the expert), you get suspect.

The ones who weren't good witnesses were the ones who obviously refused to consider the possibility that they may be wrong in their conclusions, that their data base is wrong, or that the particular factor they are considering is wrong.

On some occasions, judges clearly were intrigued by the witness, and engaged her or him in extended conversations and questioning from the bench. Witnesses enjoyed these encounters, and often felt "listened to" in ways that affirmed their expertise and status. Learning to deal with these issues in effective witnessing helped scholars resolve some of the skill dilemmas referred to earlier.

What about a panel? The problems of party witnessing were felt by some as a detriment to effective scholarly input and judicial consideration. This adversarial procedure was seen as both appropriate and advantageous by others. Recently, increasing attention has been given to alternative procedures for the introduction of social scientific testimony, and the scientific panel is one such option. We asked various actors how they assessed the idea of a panel. Some, of course, had had actual experience with this mechanism in the Los Angeles case; others speculated about its utility.

Contrary to original expectations, not all scientists supported the idea of a panel, and not all attorneys opposed it. Data analysis indicated that 3 other factors determined how this mechanism was assessed: (1) perceptions of the proper style of dispute settlement in the desegregation cases; (2) desires for control of experts and the courtroom process; and (3) assumptions about the nature and role of scholarly experts.

Attorneys and scholars who accepted a legalistic model of win-lose settlement of disputes generally favored the party witness approach. Others, those who desired an integrative resolution to fractious community disputes, wanted the range of options widened beyond those dictated by traditional legal procedures. They wanted new issues introduced, non-party connected ideas examined, and bargains or compromises struck. As such, they favored a panel approach not limited by party loyalties or adversarial procedures. Many attorneys were open to the idea of a panel at the remedy stage of a trial, when plan development was at stake; at the violation stage there was less support for alternative settlement procedures.

Attorneys and scientists who wanted substantial control of the courtroom process to remain in attorneys' hands generally favored the party witness approach. The party witness process involves attorneys in selecting, preparing, directing and protecting witnesses for their side, and in checking or attacking witnesses for the other side. Many attorneys felt it was important to be able to exert such control over witnesses; without it they felt they would have little control over the evidence being entered - by their own witnesses or by others. Moreover, if witnesses had direct access to the judge, attorneys felt they would have little control over how the judge might use them, and that he might even suit his own biases in their selection and focus. Other experts, who felt constrained by their own and others' attorneys, and who wanted their access to the judge unmediated by traditional attorney-witness and attorney-judge interactions, favored a panel. They were prepared to deal with cross-examination of their individual or collective findings, but stressed the need to operate with less control by attorneys and with more accountability to the judge.

Attorneys and scholars who assumed that social scientists could be relatively unbiased and objective, or who felt that a fairly representative group of scholars (with different viewpoints) could be found, generally favored a panel. In that more insulated setting, it was felt, relatively objective scientists could proceed with their deliberations in a relatively objective manner. Other actors felt either



that most panels would be weighted in one particular direction, or that any individual scientist would have biases; they wanted to prevent these biases (collective or individual) from being actualized. Here, attorney control was most important to assert. Informants' discussion of panels was related to their perceptions of the "liberal" biases of social scientists and the scientific academy. Different views on the roles scholars played in court (and their choices of normative stance), and the role that scientific evidence played in court, clearly were related to notions of the utility or disutility of a panel.

Some concluding thoughts: problems of implementation

Two final issues present serious challenges to the course of litigation with regard to school desegregation controversies, and to the role of social scientific evidence in that litigation. These issues help identify the current limits of court action, and the current limits of social scientific testimony in the desegregation cases.

First, court-designed remedies generally have included scant attention to mechanisms for ensuring that school systems implement these remedies in good faith. In some cases, judges did not appear to care whether their plans were implemented, apparently desiring not to push an issue or a system any further. In other cases, judges simply have not perceived initiation or implementation as within their purview; they indicated that if school authorities failed to act on a decision it was up to the plaintiff attorney to bring the matter to their attention. Other judges have assumed the good will or expertise of educational authorities to solve these problems of institutional change, sometimes in the face of massive evidence to the contrary. However, in some cases, judges have established masters, monitors, monitoring commissions and even special school district "departments of implementation" to ensure some degree of compliance with their orders.

Nonetheless, compliance is barely the issue: in a human system such as the school, educators' commitment to racial justice really is at stake. Mere compliance with the letter of the law, without commitment of its spirit, is not adequate. Clearly no judge can "require" educators to care, students to learn, whites to stay in the community, and so on. However, these issues can be addressed in a comprehensive plan, and incentive systems can be developed to marshall human resources more effectively than has been the case. The history of school systems'

responses to court orders requiring desegregation is a history of minimal compliance, with negligible commitment to serious reform of the educational opportunities available to and provided for minority youth. Perhaps the problem is that school systems seldom have had the power to alter themselves, certainly not without the support of other powerful groups and institutions in the local and national community. Perhaps school desegregation, without accompanying changes in segregated neighborhoods and workplaces, simply is an unworkable social policy. It certainly is not a policy that has gained vigorous public support. Some observers argue that it is time to find new solutions to problems of social injustice in school and society. There are many complex variables at stake here, and no one expects the schools or the courts alone to solve these problems. However, courts which do not attend to the problems of implementation of their orders fail to ensure action on even that part of the problem they have elected to address.

Second, many of the data and theories current social science can provide about the conditions under which desegregated education might be implemented effectively have not been asked for or delivered in court. Findings regarding the nature of equal-status interracial contact and collaboration, the development and use of multi-ethnic and anti-racism curricula, organizational development or community-partnership efforts within local schools, new and vigorous leadership patterns in school staffs, and institutional change in human service systems, seldom have been introduced into court and seldom have informed court findings and subsequent remedies. Despite their obvious relevance, they have been utilized infrequently in the design and operation of implementation efforts. Why not?

These findings are relevant to the eventual resolution or amelioration of racially potent community controversies about the quality and equality of education. Clearly they are relevant to a settlement of the broader disputes underlying specific school desegregation litigation. Ignoring these relevant findings leads to the creation of remedies which will not make much of a difference to school children no matter how consistent the remedies may be with the letter of legal precedent and constitutional guarantee. Indeed, most cogent research in the past two decades of school desegregation show just that: not much of a difference. The traditional model of litigation and dispute settlement has stopped short of responding fully to these issues and to utilizing these data. When the legal dispute is settled the courtroom actors -- scholars, attorneys and judge -- apparently see their job as done. The community dispute, however, may be far from settled. And perhaps it cannot be settled within the context

of a lawsuit. Other dispute-settlement mechanisms may be more effective than the courts, and other avenues for applying social science may be more fruitful.

Our next steps in this analysis and reporting process

This brief summary is primarily a shorthand version of the final report. It cannot begin to do justice to the rich details of the cases and the attitudes and courtroom interactions our informants shared with us. The summary does provide an outline of the study's core findings.

The final report does not conclude our analysis of these data. Several of its chapters are the initial analysis of the problems under investigation, with full integration of both qualitative detail and quantitative comparison to continue over the next several months. As we further explore these data, we will appreciate readers' responses to this summary and to the final report. Your reactions, questions, suggestions, etc., undoubtedly will help direct our attempt to portray and understand the views and experiences of all these actors in school desegregation litigation.

The immediate next steps in our investigation are reflected in the completion of the final report. The approximate table of contents of that report is provided below.

- Chapter 1: The Social Context of Desegregation Controversies
- Chapter 2: The Legal Context of School Desegregation
- Chapter 3: A Brief History of Social Science Evidence in the School Desegregation Cases
- Chapter 4: Varieties of Applied Social Science in Desegregation
- Chapter 5: Methods and Analytic Approaches in this Study
- Chapter 6: Role Conflict for Scholar-Witnesses
- Chapter 7: Scholars' Choice of Normative Stance in Court
- Chapter 8: Political Conflict in the Use of Social Science
- Chapter 9: Attorneys' Use of "Irrelevant" Testimony
- Chapter 10: Preparation of Witnesses
- Chapter 11: Characteristics of a "Good Witness"
- Chapter 12: Strategies of Cross-Examination
- Chapter 13: Influencing Judges' Minds (or at least their acts)
- Chapter 14: Panels and Parties: Alternative Modes for the Use of Social Scientific Evidence in Court
- Chapter 15: Conclusions: Problems of Implementing Court Orders (Anyway)

Appendices:

- A: Instruments
- B: Bibliographic Citations