

Appeal No. 03-2415

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SAMANTHA J. COMFORT, et al.,

Plaintiffs-Appellants,

v.

LYNN SCHOOL COMMITTEE, et al.,

Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION AS
AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES**

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BRIEF OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF APPELLEES¹

INTEREST OF AMICUS CURIAE

The American Psychological Association (“APA”) is a voluntary, nonprofit, scientific and professional organization founded in 1892. It is the major association of psychologists in the United States, with more than 155,000 members and affiliates. The APA has 55 divisions representing the full array of areas of emphasis within the field of psychology. The objects of the APA include advancing psychology as a means of promoting human welfare, diffusing psychological knowledge, and encouraging the application of research findings to the promotion of health and public welfare. Members of APA research psychological aspects of important social issues such as the causes and consequences of racial and ethnic prejudice and stereotypes and the development of such prejudice and stereotypes in children. Research by our members bears directly on the question of whether diversity in K-12 schools constitutes a compelling governmental interest. The body of social scientific knowledge

¹ The parties have consented to the filing of this brief. No counsel for any party had any role in the authoring of this brief, and no one other than the amicus curiae provided any monetary contribution to its preparation or submission. APA gratefully acknowledges the assistance of Eugene Borgida, Ph.D., Susan T. Fiske, Ph.D., Sandra Graham, Ph.D., James M. Jones, Ph.D., Janet Ward Schofield, Ph.D., Judith G. Smetana, Ph.D., Linda R. Tropp, Ph.D., Elliot Turiel, Ph.D., and Gil Seinfeld, J.D., in the preparation of this brief.

pertinent to this matter provides a substantive scientific context for considering this case. Studies in this arena are scientifically reliable and peer-reviewed, and taken together bear directly on the empirical claims at the heart of this matter.

INTRODUCTION

Since the publication of Dr. Gordon Allport's *The Nature of Prejudice* in 1954, Intergroup Contact Theory has received an enormous amount of scholarly attention from psychologists. The theory posits that, under appropriate conditions, intergroup contact can effectively reduce intergroup prejudice. Allport's central thesis—that intergroup contact can help bring about a reduction in intergroup prejudice—has repeatedly been vindicated through research involving a variety of methodologies including field studies in various naturalistic settings, laboratory experiments, and surveys as well as through a recent meta-analytic review.²

The constitutionality of the school assignment plan (“the Plan”) at issue in this case must be assessed against the backdrop of the robust body of social-

² Meta-analysis is a statistical technique for determining the size and consistency of effects across tests of hypotheses. “To perform a meta-analysis, researchers attempt to find every study conducted on a particular topic; then, they statistically pool the results to examine the overall patterns of effects and to uncover additional variables that moderate those effects.” Thomas F. Pettigrew & Linda R. Tropp, *Allport's Intergroup Contact Hypothesis: Its History and Influence*, in *Reflections on Allport* (John. F. Dovidio et al. eds., in press). See generally Robert Rosenthal, *Meta-analytic Procedures for Social Science* (1991).

psychological evidence relating to Intergroup Contact Theory. The Plan was designed to alleviate conditions of segregation and racial tension that had plagued the school system in Lynn, Massachusetts for decades. It prohibits transfers among Lynn schools that would have the effect of exacerbating conditions of segregation within racially imbalanced schools. In this way, consistent with cutting edge psychology research related to Intergroup Contact Theory, the Plan takes the indispensable first step toward fostering harmonious intergroup relations within Lynn's schools: it seeks to encourage sustained intergroup contact.

This brief proceeds in three parts. In Part A, it describes the negative stereotyping and discriminatory behavior that intergroup contact is designed to prevent. In particular, it examines the significant harms resulting from racial stereotyping and from the routine cognitive processes underlying group categorization. Once racial categories are formed and become salient, the mind systematically distorts the assimilation of information pertaining to members of racial groups to reinforce stereotypes and reject information inconsistent with them. Racial and ethnic stereotypes lead even individuals who score low on conscious measures of racial prejudice to behave in pernicious and discriminatory ways.

In Part B, this brief demonstrates the capacity of the Plan to prevent and alleviate these harms, setting forth the extensive research findings linking

intergroup contact, the dissolution of racial and ethnic stereotypes, and the relaxing of rigid systems of racial and ethnic categorization. Intergroup contact can change the way individuals perceive their group membership and can thereby mitigate harmful prejudices and stereotype-based cognitive processes and behaviors. More specifically, when different racial groups interact with one another under certain conditions for a sustained period of time, the significance of racial group membership diminishes as new cross-cutting social categories emerge. The close connection between intergroup contact and decreased levels of prejudice offers powerful support for the constitutionality of Lynn's school assignment plan—which is designed, above all else, to make substantial contact between White and minority students in the Lynn school system possible.

Finally, in Part C, this brief rebuts a pair of claims that were advanced by appellants in the district court. The relevant scholarly literature does not support appellants' claims that (1) curricular changes alone are adequate to teach students the values of diversity and respect for members of other groups, or (2) a minimal level of intergroup contact will suffice to yield significant benefits. To the contrary, the scholarly literature suggests that only substantial, sustained intergroup contact under favorable conditions yields marked improvement in intergroup relations.

ARGUMENT

LYNN'S SCHOOL ASSIGNMENT PLAN IS NARROWLY TAILORED TO SERVE THE COMPELLING INTEREST IN FOSTERING HARMONIOUS INTERGROUP RELATIONS

In its recent decision in *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003), the Supreme Court reaffirmed that, at least in the university setting, “student body diversity is a compelling state interest that can justify the use of race in . . . admissions.” In reaching this conclusion, the Court explained that assembling a racially diverse class “promotes cross-racial understanding, helps to break down racial stereotypes, . . . enables [students] to better understand persons of different races[,] . . . and better prepares students for an increasingly diverse workforce and society[.]” *Id.* at 330 (internal quotation marks omitted).

As the court below noted, these precise goals lie at the heart of Lynn’s school assignment plan. Like the admissions policy upheld in *Grutter*, the Plan is designed to “prepar[e] students to be citizens in a multiracial society[,]” to “promot[e] racial and ethnic diversity[,]” and “to block the formation of stereotypes and racist attitudes.” *Comfort ex rel. Neumyer v. Lynn Sch. Comm.*, 283 F. Supp. 2d 328, 371, 375, 379 (D. Mass. 2003). As we show below, a substantial body of peer-reviewed psychological research demonstrates that maintenance of an integrated student body is likely to promote these compelling interests.

A. If Unchecked By Efforts to Promote Sustained Intergroup Contact, Unconscious Cognitive Processes Can Lead to Harmful Stereotyping and Discriminatory Behavior

1. Stereotypes, Including Those Pertaining to Race, Take Hold at a Very Young Age

As young children become aware of the world around them, they begin to categorize that world. Such categorization is a normal process that permits both children and adults to make sense of their complex environment. Without such categorization, each day would require an enormous expenditure of mental energy in analyzing each object, individual, and situation encountered. *See generally* Diane M. Mackie et al., *Social Psychological Foundations of Stereotype Formation*, in *Stereotypes and Stereotyping* 41, 44-45 (Neil C. Macrae et al. eds., 1996); Susan T. Fiske, *Stereotyping, Prejudice and Discrimination*, in *2 The Handbook of Social Psychology* 357, 362 (Daniel T. Gilbert et al. eds., 4th ed. 1998).

Young children use visual cues to categorize what they see. Mackie et al., *supra*, at 46. Preschoolers have been shown to classify along such varied dimensions as gender, ethnicity, occupation, and age. *See id.* at 46-47. Racial and gender categories, in particular, become salient for children at a young age. *See* Rebecca S. Bigler & Lynn S. Liben, *A Cognitive-Developmental Approach to Racial Stereotyping and Reconstructive Memory in Euro-American Children*, 64

Child Dev. 1507, 1516 (1993). And these classifications may evolve into stereotypes—including the assigning of negative attributes to group members and the development of expectations relating to behavior—at age 4 or 5. See Frances E. Aboud & Maria Amato, *Developmental and Socialization Influences on Intergroup Bias*, in *Blackwell Handbook of Social Psychology: Intergroup Processes* 65, 72 (Rupert Brown & Samuel L. Gaertner eds., 2001).

Stereotypes can be understood as “beliefs we have about people in groups.” David J. Schneider, *Modern Stereotype Research: Unfinished Business*, in *Stereotypes and Stereotyping*, *supra*, 419, 421. They form when an aggregate of persons is perceived to constitute a group and when the perceiver then develops a set of beliefs regarding attributes that are thought to characterize the group as a whole. Mackie et al., *supra*, at 44, 47. Children do not learn stereotypes and prejudice solely from their parents; their social experiences—including, of course, their experiences in school—also lead them to make inferences about their world and the people in it. See Aboud & Amato, *supra*, at 73-76. Children “seek and imitate regularities in their social world” and “will tailor their public behavior to fit norms, particularly if counter-normative behavior provokes disapproval.” Frances E. Aboud & Sheri R. Levy, *Interventions to Reduce Prejudice and Discrimination in Children and Adolescents in Reducing Prejudice and Discrimination* 269, 278-79 (Stuart Oskamp ed., 2000). Thus, school districts—through their ability to

frame the intergroup interactions of young children—are critically situated to prevent the formation and ossification of racial stereotypes.

2. Stereotyping and Routine Processes of Categorization Can Skew Perceptions of Members of Other Groups

A large body of research demonstrates that the simple act of classifying individuals into groups—even before assumptions relating to group character and behavior are formed—can have dramatic effects on one’s perception of and attitude towards group members. Specifically, research indicates that individuals—including children—exhibit powerful biases in favor of groups of which they are members.³ That is, they have more favorable attitudes towards individuals with whom they are grouped, and they reflexively assign positive characteristics to these “ingroup” members—even where the criteria of membership are exceedingly thin.

“With in-group/out-group differentiation,” it has been noted, “the between-group contrast has a strong evaluative tone, producing in-group bias.” Mackie et al., *supra*, at 46; see generally Michael J. Migdal et al., *The Effects of Crossed Categorization on Intergroup Evaluations: A Meta-Analysis*, 37 Brit. J. Soc.

³ See, e.g., Mia D. Yee & Rupert Brown, *Self-Evaluations and Intergroup Attitudes in Children Aged Three to Nine*, 63 Child Dev. 619 (1992) (finding in-group favoritism among young children).

Psychol. 303 (1998) (presenting meta-analytic evidence confirming the existence of “ingroup bias”); Brian Mullen et al., *Ingroup Bias as a Function of Salience, Relevance, and Status: An Integration* 22 Eur. J. Soc. Psychol. 103 (1992). Indeed, “the mere existence of different social groups is sufficient to foster biased behavior.” See David A. Wilder, *Perceiving Persons as a Group: Categorization and Intergroup Relations*, in *Cognitive Processes in Stereotyping and Intergroup Behavior* 213, 228 (David L. Hamilton ed., 1981) (citing Henri Tajfel, *Cognitive Aspects of Prejudice*, 25 J. Soc. Issues 79 (1969)).

Although categorization is by itself sufficient to trigger ingroup bias, other unconscious processes skew perception and behavior through the interaction of categorization and stereotyping. Once the categories into which we divide ourselves and others become imbued with stereotypes, the perceiver is led to at least two predictable cognitive responses.

First, the perceiver expects greater homogeneity and less differentiation within an outgroup than an ingroup. That is, people tend to assume that ingroup members will possess a *diversity* of attitudes and beliefs, while outgroup members will conform to stereotypic expectations. See Wilder, *supra*, at 226 (“[I]ngroup members [a]re assumed to have a wider range of beliefs than outgroup members. Relative to the ingroup, the outgroup [is] thought to be more homogeneous”); see also Brian Mullen & Li-tze Hu, *Perceptions of Ingroup and Outgroup*

Variability: A Meta-Analytic Integration, 10 Basic & Applied Soc. Psychol. 233-252 (1989) (presenting meta-analytic evidence confirming the “outgroup homogeneity hypothesis”)⁴. Members of outgroups, then, are viewed in terms of overgeneralized stereotypes.

Crucially, for purposes of this litigation, research has shown that the presumption of outgroup homogeneity frames young children’s perceptions of racial groups:

Rise of the homogeneity effect—the mistaken perception that all Black people are the same and all White people are the same—has been demonstrated [among children] At 5 and 6 years, their perception of individual differences declines in favor of ethnic differences, an indication of the homogeneity effect.

Aboud & Amato, *supra*, at 71. Thus, as children begin the unconscious process of using racial categories to group people and assign increasing content to those categories, they will adopt the presumption of outgroup homogeneity. Their expectation of ingroup differentiation will lead them to perceive ingroup members as *individuals*—persons who may differ from one another across a variety of dimensions; the expectation of outgroup homogeneity, however, may stifle

⁴ Meta-analyses examining many of the concepts discussed here reveal good generalizability from lab to field. Indeed, some show stronger effects in the field. See, e.g., Brian Mullen & Li-tze Hu, *Perceptions of Ingroup and Outgroup Variability: A Meta-Analytic Integration*, 10 Basic & Applied Soc. Psychol. 233 (1989).

children's perception of differences among members of a racial outgroup and may thereby foster the impression that members of another racial group are "all the same." This will have particularly unwelcome effects, of course, where the content of this perceived "sameness" consists of a body of negative stereotypes.

Second, studies demonstrate that stereotypes cause material distortions in memory. See Wilder, *supra*, at 226 ("[T]he categorization of persons into an ingroup and an outgroup is sufficient to bias subjects' recall of information about the groups."). More specifically, when we entertain a stereotype, we may remember far better the behavior that is consistent with the stereotype than counter-stereotypic behavior. This was illustrated in an experiment in which White children, aged 4-9, were asked to recall stories involving either African-American or European-American characters associated with one of three negative traits—meanness, dirtiness, or laziness. See Bigler & Liben, *supra*, at 1507-1518. The data showed that children's memory for stories that were consistent with racial stereotypes was better than their memory for stories involving counter-stereotypic themes and behaviors. See *id.* at 1515. That is, White children found it easier to remember stories depicting African-Americans as mean, dirty, or lazy than stories in which Whites were portrayed negatively. In this way, racial stereotypes exhibit a kind of cognitive self-reinforcement; they cement perceptions of group characteristics whether or not supportive evidence is available. See generally

Charles Stangor & David McMillan, *Memory for Expectancy-Congruent and Expectancy-Incongruent Social Information: A Meta-Analytic Review of the Social Psychological and Social Developmental Literatures*, 111 Psychol. Bull. 42 (1992) (presenting results of a meta-analytic study confirming the distorting effects of categorization on memory).

Taken together, the ramifications for interracial relations of the findings pertaining to categorization, cognition, and stereotyping suggest that, due largely to unconscious cognitive processes, Whites may (1) exhibit a strong evaluative bias in favor of other Whites, (2) assume that differences among African-Americans (and within other minority groups) are limited, and (3) forget behavior by members of minority groups that disconfirms the stereotypes they maintain. These features of human cognition are not conducive to racial groups forming accurate impressions of, or interacting harmoniously with, one another. To the contrary, these unconscious responses can underscore and even increase perceptions of intergroup difference and can prompt prejudice and discriminatory behavior.

3. Stereotyping Can Trigger Discriminatory Behavior

Studies of “aversive racism”—racist prejudice harbored by those who would find it aversive to acknowledge their racial biases—provide further insight into the harms that are caused by racial categorization and stereotyping. The aversive racism model assumes that biases in cognitive processing such as those described

in Part A.2, *supra*, together with the historical prevalence of racial animosity in the United States, underlie the formation of prejudice and racial stereotypes. Empirical research premised on this assumption, in turn, has demonstrated that the presence of such stereotypes can trigger discriminatory behavior—even by individuals who regard themselves as nonprejudiced. *See generally* Samuel L. Gaertner & John F. Dovidio, *The Aversive Form of Racism, in Prejudice, Discrimination, and Racism* 61-89 (John F. Dovidio & Samuel L. Gaertner eds., 1986).

The effects of stereotyping on behavior by “aversive racists” have been tested and confirmed experimentally. In one experiment, for example, White participants were asked to evaluate either an African-American or a White candidate for a position in an ostensibly new program for peer counseling at their university. *See* John F. Dovidio et al., *Why Can’t We Just Get Along? Interpersonal Biases and Interracial Distrust*, 8 *Cultural Diversity & Ethnic Minority Psychol.* 88, 92 (2002). The data revealed that when candidates’ credentials were manipulated to represent either very strong or very weak qualifications for the job, race had no effect on selection. Where, however, candidates were moderately qualified for the position—and, hence, the appropriate decision was ambiguous and a decision not to recommend the African-American candidate could be rationalized without reference to race—White participants

recommended Whites 76% of the time and African-Americans only 45% of the time, though their credentials were identical. *See id.*

Indeed many people, even those who are well-intentioned and have favorable conscious attitudes about individuals of other races and ethnicities, demonstrate that they implicitly (unconsciously) harbor a variety of negative feelings and thoughts, (*i.e.*, prejudices and stereotypes) about other racial and ethnic groups. Such stereotyping is virtually automatic, often operating independent of conscious attitudes, beliefs and perceptions. *See, e.g.*, Steven J. Spencer et al., *Automatic Activation of Stereotypes: The Role of Self-Image Threat*, 24 *Personality & Soc. Psychol. Bull.* 1139 (1998). The effect of implicit (unconscious) stereotyping on cognition has likewise been demonstrated through a number of “reaction-time” experiments measuring the speed with which two concepts are associated. The associative process is automatic and outside the conscious control of the individual. The research on associative processes conclusively demonstrates that unconscious stereotyping and prejudice, including racial stereotyping, is widespread. *See* Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 *J. Personality & Soc. Psychol.* 5 (1989); *see also*, John F. Dovidio et al., *On the Nature of Prejudice: Automatic and Controlled Processes*, 33 *J. Experimental Soc. Psychol.* 510 (1997).

This research documents the powerful effects of racial stereotyping on cognition and behavior, and further suggests the importance of intervening to prevent racial and ethnic stereotypes from forming. Adults may find it difficult to abandon the negative stereotypes they maintain. Mahzarin R. Banaji & Anthony G. Greenwald, *Implicit Gender Stereotyping in Judgments of Fame*, 68 J. Personality & Soc. Psychol. 181, 197 (1995). Accordingly, measures designed to prevent *children* from developing negative stereotyped impressions of other racial and ethnic groups—impressions they might then carry into adulthood and which could motivate discriminatory behavior—are particularly significant. As we demonstrate immediately below, promotion of intergroup contact among children (under certain conditions) has proven to be a particularly effective means of preventing the establishment of harmful stereotypes.

B. By Stimulating Intergroup Contact, the Lynn Plan Has the Potential to Reduce Racial Prejudice and to Improve Intergroup Relations

The Intergroup Contact Hypothesis advanced by Allport predicts that intergroup contact and intergroup prejudice are inversely related to one another. More specifically, Allport contended that where four key conditions are present—equal status between groups, common goals, intergroup cooperation, and the support of authorities, law, or custom—intergroup contact can be expected to reduce intergroup prejudice. See Thomas F. Pettigrew, *Intergroup Contact Theory*,

49 Ann. Rev. Psychol. 65, 66-67 (1998) (describing the basic features of Allport's hypothesis).

A rich body of research literature supports Allport's hypothesis. In particular, intergroup contact has been shown to be linked to the dissolution of racial stereotypes and the reshaping of group memberships and identity. This research provides strong support for the claim that the maintenance of integrated schools through implementation of Lynn's school assignment plan directly furthers Lynn's compelling interest in fostering harmonious intergroup relations.

1. A Battery of Studies Supports the Claim that Contact Among Groups Leads to Reduced Prejudice

A recent meta-analytic test of intergroup contact theory examined more than 500 individual studies involving more than 250,000 people from 38 countries. More than ninety-three percent of these studies revealed an inverse relationship between contact and prejudice—in other words, that the greater the intergroup contact the lower the incidence of prejudiced attitudes.⁵ See Thomas F. Pettigrew

⁵ Consistent with the results for the full analysis, analysis of cases involving contact among racial and ethnic groups reveals that greater intergroup contact is significantly associated with lower intergroup prejudice. Though modest, the existence of this effect—after combining such a large group of studies of varied research methodologies—is impressive. Moreover, the analysis indicates that the more rigorous research studies—using more reliable measures and procedures—show even stronger effects. In addition, other work suggests that even modest effects can be very important due to the consequences in natural settings. See, e.g., Richard F. Martell et al., *Male-Female Differences: A Computer Simulation*, 51

& Linda R. Tropp, *Allport's Intergroup Contact Hypothesis: Its History and Influence*, in *Reflections on Allport* (John F. Dovidio et al. eds., in press); Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test and Reformulation of Intergroup Contact Theory*, 3-4, 13 available at <http://www.cbrss.harvard.edu/events/ppbw/papers/tropp.pdf>.⁶ The meta-analysis further demonstrates that intergroup contact changed perceptions of the *entire* outgroup—not only those outgroup members in the immediate contact situation. *See id.* at 30. Scholars report that “Allport’s formulation continues to receive support across a variety of situations, groups, and societies[,]” Pettigrew, *Intergroup Contact Theory*, at 68, and that “[a]ctual intergroup contact, under specified conditions, can be a powerful way of reducing intergroup biases.” John F. Dovidio et al., *Reducing Contemporary Prejudice: Combating Explicit and Implicit Bias at the Individual and Intergroup Level*, in *Reducing Prejudice and Discrimination* 137, 147 (Stuart Oskamp ed., 2000). In short, Allport’s hypothesis has proven durable and robust; there is substantial and longstanding evidence that intergroup contact reduces prejudice.

Am. Psychol. 157, 158 (1996). Small effect sizes may also have enormous impact over time. *See, e.g.*, Robert P. Abelson, *A Variance Explanation Paradox: When a Little is a Lot*, 97 Psychol. Bull. 129 (1985).

⁶ *See also*, Thomas F. Pettigrew & Linda R. Tropp, *Does Intergroup Contact Reduce Prejudice? Recent Meta-Analytic Findings*, in *Reducing Prejudice and Discrimination* 93 (Stuart Oskamp, ed. 2000).

The applicability of intergroup contact theory to racially integrated education is likewise well-documented. For example, Drs. Janet Schofield and H. Andrew Sagar studied student behavior in a new, integrated middle school, where Allport's preconditions were secured to the greatest extent possible. See Janet W. Schofield & H. Andrew Sagar, *Peer Interactions in an Integrated Middle School*, 40 *Sociometry* 130-38 (1977). Schofield and Sagar analyzed voluntary seating patterns in the cafeteria during the first year of the school's existence. Their analysis revealed that seating became more and more integrated over time—that is, members of different racial groups sat together more as intergroup contact persisted. See *id.* at 135 (taking note of “increasing interracial interaction” over time). The authors of this study reported, therefore, that “highly integrated interracial schooling . . . does foster increased voluntary association between Blacks and Whites.” *Id.* at 137.

Indeed, the weight of the evidence supporting Allport's basic claim is so strong that much of the modern scholarly literature relating to intergroup contact takes as its premise that intergroup contact can stimulate positive intergroup relations. More recent studies focus on narrower but crucial questions about the

factors identified by Allport as preconditions to successful contact: which are most conducive to securing the well-documented benefits of intergroup relations?⁷

Many scholars emphasize that where members of different groups are brought into contact with one another and then called upon to work cooperatively toward a common goal, intergroup bias is particularly likely to decrease.⁸ There is substantial empirical evidence to support this claim. See Janet W. Schofield & Rebecca Eurich-Fulcer, *When and How School Desegregation Improves Intergroup Relations*, in *Blackwell Handbook of Social Psychology* 475, 480 (Rupert Brown & Samuel L. Gaertner eds., 2001) (“A host of researchers have found positive results in experiments on the impact of . . . cooperative team approaches with children from diverse backgrounds.”); B. Ann Bettencourt & Nancy Dorr, *Cooperative Interaction and Intergroup Bias: Effects of Numerical*

⁷ Drs. Tropp and Pettigrew found that the overall effects of contact were moderated (*i.e.*, enhanced) by two global indicators of Allport’s proposed conditions—intergroup friendship and structural programs for optimal contact. Specifically, stronger effects were observed when the contact involved programs structured in line with Allport’s conditions and when participants reported having outgroup friends.

⁸ See, *e.g.*, Janet W. Schofield & H. Andrew Sagar, *Desegregation, School Practices, and Student Race Relations*, in *The Consequences of School Desegregation* 58, 85 (Christine H. Rossell & Willis D. Hawley eds., 1983); John F. Dovidio et al., *Reducing Contemporary Prejudice*, *supra*, at 151; David W. Johnson & Roger T. Johnson, *The Three Cs of Reducing Prejudice and Discrimination*, in *Reducing Prejudice and Discrimination*, *supra*, at 239, 243.

Representation and Cross-Cut Role Assignment, 24 *Personality & Soc. Psychol. Bull.* 1276 (1998).

Other research emphasizes that maintenance of equal status within the contact situation—*i.e.*, avoiding intergroup stratification along academic or other lines—is important to securing the benefits of intergroup contact. “The teaching and learning that occur under grouping practices that emphasize equal-status interaction, enhance black students’ achievement and all students’ motivation to learn in desegregated schools.” Joyce L. Epstein, *After the Bus Arrives: Resegregation in Desegregated Schools*, 41 *J. Soc. Issues* 23, 39 (1985). *See also*, *e.g.*, Pettigrew, *Intergroup Contact Theory*, *supra*, at 66 (“Allport stressed equal group status *within* the [contact] situation[;] [m]ost research supports this contention . . .”).

There is also substantial evidence linking the support of law, authority, or custom to improved intergroup relations. “With explicit social sanction, intergroup contact is more readily accepted and has more positive effects.” Pettigrew, *Intergroup Contact Theory*, *supra*, at 67. Furthermore, “research which examines individual cases of school desegregation within the United States suggests that both community and leadership support are key variables associated with the successful implementation of desegregation plans.” Schofield & Eurich-Fulcer, *supra*, at 484.

Whether focused on intergroup cooperation and common goals, equal status, or the sanction of law and authority figures, the studies surveyed in this section all lend support to Allport's claim that intergroup contact leads to reduced prejudice and improved intergroup relations. As a result, they also provide strong support for Lynn's school assignment plan.⁹ By cultivating conditions in which sustained intergroup contact is likely to occur, the Plan creates conditions that have repeatedly been shown to affect intergroup relations positively.¹⁰

2. Why Intergroup Contact Works: Creating New, Inclusive Social Categories

Many scholars believe the benefits of intergroup contact flow from the capacity of such contact to prompt the deconstruction of group stereotypes and the creation of new salient social categories. As one study explains:

Negative stereotypes tend to lose their primary potency
and to be reduced when interactions reveal enough detail

⁹ It bears emphasis that expert testimony presented at trial—which the district court characterized as “credible and extremely persuasive”—established that under the Plan “Lynn schools amply satisfied all four of [Allport's] conditions.” *Comfort*, 283 F. Supp. 2d at 354, 357.

¹⁰ The studies discussed in this section—by focusing on the various Allport factors in isolation—also demonstrate that it is not necessary for all four of these factors simultaneously to be present in order for the benefits of intergroup contact to accrue. The Allport factors are best understood as facilitating, rather than essential, conditions for successful intergroup contact. Pettigrew, *Intergroup Contact Theory*, *supra*, at 69-70. The Lynn schools, which have in fact been found to satisfy all four of Allport's conditions, *see, supra*, note 10, therefore have a particularly strong capacity to reap the benefits of intergroup contact.

that group members are seen as individuals rather than as members of an ethnic group. All collaborators become “one of us.” In other words, cooperation [within the contact situation] widens the sense of who is in the group, and “they” become “we.”

Johnson & Johnson, *supra*, at 247. See also Samuel L. Gaertner et al., *The Contact Hypothesis: The Role of a Common Ingroup Identity on Reducing Intergroup Bias Among Majority and Minority Group Members*, in *What’s Social About Social Cognition?: Research on Socially Shared Cognition in Small Groups* 230, 232 (Judith L. Nye & Aaron M. Brower eds., 1996); Pettigrew, *Intergroup Contact Theory*, *supra*, at 75; Wilder, *supra*, at 245. This phenomenon is particularly well-documented in connection with cooperative learning or work environments.¹¹

This process of redefining the salient group—recategorization—has extremely significant cognitive and behavioral consequences. The evolution of salient social groupings that cross racial or ethnic lines temper the harmful perceptual distortions triggered by racial categorization. See, *supra*, Part A.2. Even more important, once members of different racial groups are categorized together, the powerful ingroup bias described in Part A.2 causes the individuals

¹¹ See, e.g., Bettencourt & Dorr, *supra*, at 1288 (“[C]ross-cut role assignments may be instrumental in decreasing the salience of categorical boundaries, which may reduce high levels of identification with the particular in-group[] that was salient in the specific contact situation.”); Johnson and Johnson, *supra*, at 247 (“Cooperative situations . . . generate a multidimensional, dynamic, and realistic view of others.”).

within these groups to view one another more favorably. As leading proponents of the recategorization perspective have explained, “[t]ransforming members’ representations of the groups to recognize a common ingroup identity can harness the psychological forces that contribute to intergroup bias and redirect them, thus improving attitudes towards people who would otherwise be recognized only as outgroup members.” Dovidio et al., *Reducing Contemporary Prejudice*, *supra*, at 158.

Applied to the situation in the Lynn schools, the changes that can be wrought through sustained intergroup contact are substantial. As Lynn’s school assignment plan brings together in single schools significant numbers of students from different racial and ethnic groups, Intergroup Contact Theory suggests that the significance of racial and ethnic categories (and stereotypes) will diminish and new categories, encompassing clusters of students from across racial groups, may emerge. Thus, the Plan has the potential fundamentally to reconstruct notions of group identity and thereby reduce racial prejudice.¹²

¹² A diminishing of intergroup anxiety and possible resultant use of stereotypes may help to explain the relationship between intergroup contact and improved intergroup relations. Some researchers emphasize that individuals unaccustomed to intergroup interaction may experience significant anxiety when forced to interact with members of other groups. *See generally* Walter G. Stephan & Cookie White Stephan, *Intergroup Anxiety*, 41 J. Soc. Issues 157-175 (1985). Such anxiety, in turn, may cause an individual to avoid intergroup interaction and may trigger increased negative or positive evaluations where interaction is unavoidable.

3. Intergroup Contact is Critical to the Development of Children's Moral and Social Reasoning

The capacity of intergroup contact to decrease the salience of group boundaries also carries the potential to bring about salutary changes in the way children reason about treatment of members of other racial and ethnic groups. A growing body of research indicates that children of all ages exhibit different behavioral responses and evaluative reactions to conduct depending on the "domain" in which the conduct occurs. See Marie S. Tisak, *Domains of Social Reasoning and Beyond*, 11 *Annals Child Dev.* 95, 98 (1995); see generally Judith G. Smetana, *Morality in Context: Abstractions, Ambiguities, and Applications*, 10 *Annals Child Dev.* 83 (1995); Elliot Turiel et al., *Morality: Its Structure, Functions and Vagaries*, in *The Emergence of Morality in Young Children* 155

See *id.* at 165, 170. In addition, "[u]nder . . . conditions [of intergroup anxiety], much social information will be minimally processed, and biases can enter the inference process. Thus intergroup anxiety should be associated with an increased reliance on cognitive strategies that involve simplified and biased processing of information about others." *Id.* at 168. "When anxiety distracts persons from careful attention to the environment, they rely more on available cognitive structures such as social stereotypes in making judgments of others," David A. Wilder, *The Role of Anxiety in Facilitating Stereotyping Judgments of Outgroup Behavior*, in *Affect, Cognition, and Stereotyping: Interactive Processes in Group Perception*, 87, 87-88 (Diane M. Mackie & David L. Hamilton eds., 1993). Sustained intergroup contact can help prevent these consequences by removing (or at least reducing) over time the anxiety that would otherwise attach to such interaction. See Pettigrew, *supra*, at 71 ("Continued contact generally reduces anxiety[.]"); Janet W. Schofield, *Black and White in School: Trust, Tension, or Tolerance* 162 (1989).

(Jerome Kagan & Sharon Lamb eds., 1987). That is, children reason differently about the propriety of a given action or decision depending on whether it takes place in a context that is perceived by the child as a “moral” domain or one of convention. In the former context, concerns relating to justice, fairness, and individual rights predominate, while the latter encompasses concepts relating to group functioning, social convention, and social institutions and systems. See Tisak, *supra*, at 98.

As children grow older, concerns relating to smooth group functioning and social convention take on added significance and thereby frame children’s reasoning about appropriate conduct when interacting with peers. See, e.g., Melanie Killen & Charles Stangor, *Children’s Social Reasoning about Inclusion and Exclusion in Gender and Race Peer Group Contexts*, 72 *Child Dev.* 174, 182 (2001); Melanie Killen et al., *How Children and Adolescents Evaluate Gender and Racial Exclusion*, in *Monographs for the Society for Research in Child Development* 1, 95 (Willis F. Overton ed., 2002). Moreover, group stereotypes can activate social-conventional thinking and thereby affect children’s decisionmaking. For example, one experiment assessed adolescents’ disapproval of punishing a group for a transgression where evidence of their wrongdoing was lacking. The subjects relied significantly less on moral reasoning and expressed significantly less disapproval when the transgression was consistent with stereotypic

expectations of the group being blamed. See Stacey Horn et al., *The Influence of Group Stereotypes on Adolescents' Moral Reasoning*, 19 J. Early Adolescence 98, 108-09 (1999).

Hence, as children grow older, the formation of group stereotypes interacts with the development of domains of moral and social thought to channel their judgments as well as their reasoning processes. Where the perceived salience of group membership is particularly high, social conventions relating to smooth group functioning may exert greater influence on decisionmaking. Moral principles relating to fairness and equity may be correspondingly de-emphasized. Accordingly, because contact among members of different racial groups carries the potential to reduce the perceived salience of racial group membership, *see, supra*, Part B.2, it likewise has the capacity to reduce the effect of race on children's judgments about treatment of others. By interacting with people from different racial groups, children are more likely to apply their ideas and feelings about fairness to those people. In the absence of close contact, children are more likely to view others through the lens of conventional stereotypes, rather than a moral, individualized framework.

C. Alternatives to the Plan That Have Been Advanced By Appellants Cannot Provide the Benefits That Intergroup Contact Would Provide

Appellants have not identified race-neutral means of achieving Lynn's goal of fostering diversity and harmonious intergroup relations that approach the effectiveness of the Lynn Plan. First, the relevant literature does not support their contention that curricular changes—coupled with the allocation of additional resources to improve the Lynn school system—would suffice to achieve these goals. Second, there is little scientific basis for appellants' claim that the benefits of integrated education can accrue without substantial numbers of Whites and minorities present in each school. *See Comfort*, 283 F. Supp. 2d at 380.

1. Curricular Change Is Not As Effective As Intergroup Contact In Bringing About Improvements in Race Relations

Though educational programs designed to teach children about other cultures and to instill a respect for diversity have long been available to educators and researchers, the research is tentative and inconclusive as to their utility. As a recent survey of techniques for reducing intergroup prejudice explains, “there is too little research available to inform educators about which anti-racist programs successfully reduce prejudice and stereotyping.” Frances E. Aboud & Sheri R. Levy, *Interventions to Reduce Prejudice and Discrimination in Children and Adolescents in Reducing Prejudice and Discrimination*, *supra*, at 269, 282. And while some researchers have concluded that “components of multicultural

education can have a positive impact on intergroup relations[.]” they have also noted that “we do not know which of these components is the most influential, and we do not know which components . . . are most effective for students of different ages or from different ethnic or racial groups or social-class backgrounds.” Walter G. Stephan & Cookie White Stephan, *Improving Intergroup Relations* 47, 62-63 (2001). See also Cookie White Stephan & Walter G. Stephan, *Intergroup Relations in Multicultural Education Programs*, in *Handbook of Research on Multicultural Education* 782, 793-94 (James Banks and Carrie McGee-Banks eds., 2004) (noting that multicultural curricular approaches usually have a positive effect on intergroup relations but may also have no effect or, rarely, a negative effect).¹³

2. The Benefits of Integrated Education Are Considerably More Likely to Accrue When a Critical Mass of Each Group Is Present; Higher Levels of Integration Are Likely to Yield Better Results

Appellants’ claim that the benefits of intergroup contact might be realized with only a small number of either Whites or minorities in a particular classroom is

¹³ Other research is less supportive of the potential for multicultural education to have positive effects on intergroup relations. See, e.g., Frances E. Aboud & Maria Amato, *Developmental and Socialization Influences on Intergroup* Boas, in *Blackwell Handbook of Social Psychology*, 65, 79 (Rupert Brown & Samuel L. Gaertner eds., 2001); Schofield & Sagar, *Desegregation*, *supra*, at 87 (“When the effect of multiethnic texts was examined by itself, no statistically significant relation was found between the use of such texts and . . . race relations outcomes[.]”).

likewise unsupported by the relevant psychology literature. To the contrary, as the district court concluded, “[w]ith respect to intergroup contact, the number of students in a classroom of a racial minority matters.” *Comfort*, 283 F. Supp. 2d at 380. Researchers have found, for example, that when African-Americans represent less than 15% of a student body, they are significantly more likely to choose friends on the basis of racial group membership. Schofield & Sagar, *Desegregation*, *supra*, at 71. And they have noted, further, that “[w]hen a group is proportionately very small, outgroup members have very little opportunity to interact with members of [that group] even if they are inclined to do so.” *Id.* These findings are important: research suggests that the formation of cross-group friendships is particularly critical if intergroup contact is to improve intergroup relations. *See, e.g.*, Pettigrew, *supra*, at 76; Thomas F. Pettigrew & Linda R. Tropp, *Does Intergroup Contact Reduce Prejudice? Recent Meta-Analytic Findings*, in *Reducing Prejudice and Discrimination*, *supra*, at 108. Cross-group friendships can also have positive effects on the intergroup attitudes of other in-group members who become aware of the existence of others’ cross-group friendships. *See* Stephan C. Wright et al., *The Extended Contact Effect: Knowledge of Cross-Group Friendships and Prejudice*, 73 J. Personality & Soc. Psychol. 73 (1997). Cross-race friendships are also associated with less intergroup

prejudice and negative stereotypes among children. *See, e.g.,* Aboud & Levy, *supra*, at 272.

There is evidence, moreover, that where a racial group lacks critical mass, members of that group are more likely to self-segregate by race in order to maintain group identity. *See* Schofield & Sagar, *Desegregation, supra*, at 71; *see also* Schofield & Eurich-Fulcer, *supra*, at 483 (“Consistent with the contact hypothesis, when minorities are a very small proportion of the total student body self-segregation seems to be heightened.”). In addition, children whose ethnic group is a numerical minority in a school setting may be at greater risk for harassment and peer victimization. *See, e.g.,* Sandra Graham & Jaana Juvonen, *Ethnicity, Peer Harassment, and Adjustment in Middle School: An Exploratory Study*, 22 *J. Early Adolescence* 173, 191 (2002). Resegregation, of course, will significantly reduce the measure of intergroup contact and thereby decrease the likelihood of cooperation; the concomitant benefits of stereotype dissolution and group recategorization are unlikely to be captured under these conditions.

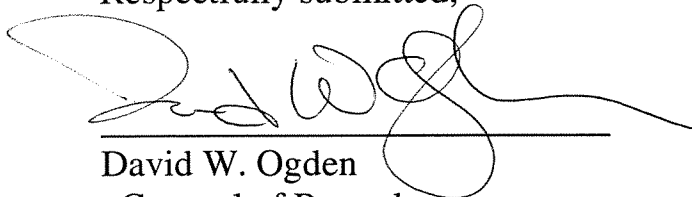
It may be that intergroup contact is ineffective at dispelling prejudice absent critical mass because without critical mass, the “equal status” factor identified by Allport is lacking. Thus, some theorize that “if only a small number of students of a given background are present, they are unlikely to enjoy equal status since they form such a small group they will be unlikely to exert much influence in the

institution.” Schofield & Eurich-Fulcer, *supra*, at 482-83. Others emphasize that where members of a racial or ethnic group are reduced to token status, they may be evaluated unfairly and may suffer cognitive and behavioral deficits as a result of their standing out in an otherwise homogeneous group. See Charles G. Lord & Delia S. Saenz, *Memory Deficits and Memory Surfeits: Differential Cognitive Consequences of Tokenism for Tokens and Observers*, 49 J. Personality & Soc. Psychol. 918, 918, 923-25 (1985) (noting that observers typically evaluate token members of other groups in ways consistent with stereotypes and prejudice, and documenting the effects of token status on memory). Still others focus on the obvious truth that where members of a group are present in an environment in small numbers only, the opportunities for intergroup contact are correspondingly limited. See Schofield & Sagar, *Desegregation*, *supra*, at 71. All of these researchers agree, however, that the benefits of intergroup contact cannot reliably be expected to accrue unless, at a minimum, a critical mass of the various groups is present. Appellants’ claim to the contrary lacks merit.

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David W. Ogden', is written over a horizontal line.

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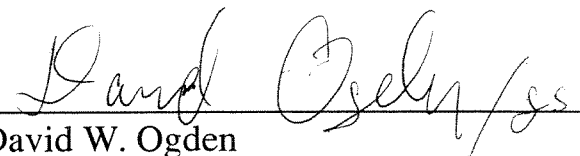
June 14, 2004

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) & 32(a)(7)(B) because this brief contains 6,988 words, excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2000 in Times New Roman 14-point type for text and footnotes.

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