

CURRENT COMMENTS

Social Sciences Information—A Vital Link Between the Law and Our Evolving Society

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I have often mentioned the cultural gap between the sciences and the arts.¹⁻² Even within the sciences there are gaps—between the clinical practitioner and the researcher and between the teacher and the researcher. Lawyers also live in their own little world. (If you consider that there are over a million of them around the globe, it may not be so little after all.) As a result lawyers are isolated from a resource of potential value: social sciences information.

It is the pioneers of law that we remember, and in most instances the pioneers were willing to listen to scholars.

In 1916, Supreme Court Justice Louis Brandeis wrote, "A lawyer who has not studied economics and sociology is very apt to become a public enemy."³ His statement may have been an exaggeration. But his firm belief in the value of social sciences information to lawyers was manifested in his work. As early as 1908 he cited studies by social scientists on the deleterious effects

of excessively long working hours on the health of women.⁴ He was arguing to uphold an Oregon law which made it a misdemeanor to employ women in factories for more than 10 hours a day.

Some people (and especially lawyers) question the need for social sciences information in the practice of law. They say that the job of the attorney is simply to "argue the law"—to base cases on the principle of *stare decisis*, of following the legal precedents which spell out the "letter of the law." However, this is not always possible. On the frontiers of law—as in cases involving civil rights, environmental protection, data banks and individual privacy—there are few if any earlier cases to cite. In these areas the law is not clearly delineated and legal precedent will be established by the decisions made. In these situations it may be necessary to support an argument with an academic treatise such as an article in a sociology journal.

For example, US Public Law 94-142 states that mentally-retarded, brain-damaged, and gifted children must receive an education "appropriate" to their needs. But what is an "appropriate" education for a brain-damaged child? A lawyer bringing suit on behalf of such a child must become an "instant expert" on the psychological and educational issues involved. To argue the client's interests persuasively, he or she must

be familiar with the "state of the art"; that is, the literature.

The vital importance of social sciences information was demonstrated in one of the most widely discussed cases of this century—*Brown v Board of Education of Topeka* (1954). This unanimous opinion of the Supreme Court outlawed racial segregation in public schools. Chief Justice Earl Warren wrote that to separate children "from others of similar age

Figure 1. The six social sciences works cited in Footnote Eleven of the Supreme Court opinion in *Brown v Board of Education of Topeka* (1954).

1. **Clark K B.** Effect of prejudice and discrimination on personality development. *Personality in the making: the fact finding report of the Mid-Century White House Conference on Children and Youth, 1950.* (Witmer H L & Kotinsky R, eds.) New York: Harper & Brothers, 1952, p. 135-58.
2. **Deutscher M, Chein I & Sadlgur N.** The psychological effects of enforced segregation: a survey of social science opinion. *J. Psychol.* 26:259-87, 1948.
3. **Chein I.** What are the psychological effects of segregation under conditions of equal facilities? *Int. J. Opinion & Attitude Res.* 3:229-34, 1949.
4. **Brameld T.** Education costs. *Discrimination and National Welfare: a series of addresses and discussions.* (MacIver R M, ed.) New York: Institute for Religious & Social Studies, Jewish Theological Seminary of America, 1949, p. 44-8.
5. **Frazier E F.** *The Negro in the United States.* New York: Macmillan, 1949, p. 674-81.
6. **Myrdal G.** *An American dilemma, the Negro problem and modern democracy.* New York: Harper and Brothers, 1944. 2 vols.

and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."⁵ The famous "Footnote Eleven" that supported this statement cited six social science works which dealt with the psychology and sociology of black Americans. The works cited are listed in Figure 1.

Social sciences information can also be used by attorneys for other purposes than as arguments to support legal briefs. Trial lawyers, for instance, can use the conclusions of many psychology articles which examine the reactions of various social groups to the sex, race, social status, or physical attractiveness of a defendant. By selecting jurors more likely to favor a particular type of defendant, the lawyer can influence the outcome of a case.

Thomas E. Salisbury of the Oklahoma firm, R.M. Mook, drew on results from such studies to provide advice to attorneys on jury selection:

Since the general public image of a criminal is male, the female defendant is an anomaly within the criminal justice system.... Women are more punitive toward other women than are men; salesmen and office workers are less punitive toward women than are other occupational groups; people in lower income groups, making less than \$5,000, tend to be more punitive toward women

than other income groups; people of upper middle class income, making between \$10,000 and \$15,000, are more likely to be punitive toward an unmarried defendant than other income groups. Defense counsel could easily elicit this type of information during voir dire [the screening of jurors] and rank prospective jurors accordingly....

If the defendant is black, defense counsel should attempt to impanel a jury which is generally young, above-average occupational status, above-average income, well-educated, politically liberal, not identified with organized religion or regular church attendance, and single....

When the defendant is poor, defense counsel should follow the same principles as when the defendant is black, except that persons of high income and education should be excluded from the jury....⁶

Lawyers can also use social sciences information in dealing with clients. People involved in law suits are usually under stress.⁷ Just as a doctor's patient is not merely a collection of symptoms, the legal client is not just a bundle of legalities. Like doctors, lawyers need to "treat" the "whole client."⁸

Since it is fairly obvious that social sciences information is critical to attorneys and judges, why don't they use it more often? The answer lies, I think, in the legal education system. Unlike their medical or scientific counterparts, most law schools make courses in

legal research mandatory. Law students learn how to search the literature. Such legal reference tools as *Shepard's Citations*, *LEXIS* (the on-line legal data base), *Wilson's Guide to Legal Periodicals*, and *West Digest System* are essential tools of the trade. Law students also traditionally serve as clerks for lawyers or judges. Legal research is a significant part of clerking. Consequently, most young attorneys know from firsthand experience the reference tools of the profession.

However, there is one weakness in this system. This is the lack of exposure to research tools which are not specifically designed for legal work. The result is that many legal researchers are like chemists who never got beyond *Beilstein* or psychologists who think a search of *Psychological Abstracts* is all one needs. This situation is of course aggravated by the fragmentation of university library systems. For example, the *Social Sciences Citation Index*TM, like other extralegal reference tools, is found in relatively few law school libraries. But often it is in another library on campus where it remains unknown to law students.

It is ironic that lawyers, the one professional group most familiar with the citation indexing concept, are almost totally ignorant of the *SSCI*TM. Both *Shepard's Law Review Citations* and the *SSCI* cover a large number of legal

periodicals. However, the *SSCI* also covers the interface between the social sciences and the law.

At the Georgetown University Law Center Library, which subscribes to the *SSCI*, reference librarian Bill Maxon reports, "It is not being used as much as it should be." He thinks this may be because the index is a relatively new tool and students are unfamiliar with it. However, instruction in using the *SSCI* will be included in the first-year course in legal research at Georgetown this year. But in most instances lawyers are still limited in their exposure to non-legal sources.

For example, though we cover most important legal journals in *Current Contents*[®] / *Social & Behavioral Sciences*, very few professors of law make use of this resource. *CC*[®] should be of special value to them. Not only would it permit them to locate articles on particular topics appearing in these legal journals, it would also give them needed exposure to the ideas reported in the non-legal press. *CC/S&BS* provides a broad perspective on sociology, psychology, economics, and the interfaces between science and law such as forensic science.

According to Philip Selznick, "Legal reasoning cannot but accept the authority of scientifically validated conclusions regarding the nature of man and his institutions. Therefore, inevitably, sociology

and every other social science must have a part in the legal order.”⁹

Social sciences information is no substitute for a well-prepared argument based on the law. In some cases it merely demonstrates the erudition of the attorneys involved and may even alienate less literate judges. But in cases where its introduction is appropriate, social sciences information is essential for lawyers and judges alike. In an age of accelerating social change, we can expect and should demand greater use of relevant social sciences information by the legal profession. By the same token all of

us should have greater access to legal information. If an educated patient can search *Medline* or *Scisearch*[®] for his or her doctor, so can the knowledgeable client search *LEXIS* or information banks of the social sciences like *Social Scisearch*[®] to “help” his or her attorney. This is one of the ways in which we as clients can make up for the deficiencies of the legal and medical education systems. In this way we can help practitioners bridge the gaps that seem to exist everywhere between all fields of specialization.

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4. 208 US 412 (1908).
5. 347 US 483 (1954), p. 494-5.
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