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Training for Socio-Legal Research: College Prior to Law School, Self Help and On-the-Job Training

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Finally, there are the elements of inferential statistics, primarily sampling theory and practice, and devices to ascertain and measure associations and relationships between factors that might turn out to be cause and effect.

By now there are sufficient legal case histories available that allow the explication of all these methods and devices, and the number of these case histories is growing by the week. Thus, legal examples abound. It is by now possible to teach the social science tool chest, by building a seminar or course around a single legal problem area, such as capital punishment, for instance; I myself have given such a seminar. The teaching goal in such a context must remain a limited one, namely an understanding of the basic structures and problems, so that later on the student may either proceed in his studies to become a more proficient technician, or—more likely—use what he has learned whenever he later must collaborate with a social scientist, be he survey-maker or statistician.

He should be able to work with the competent research technicians, not on a level where he has only a vague idea of what they are doing, but with understanding and some ability to counsel, if not to guide and to direct.

The important thing to know in such a situation is to see the possible research approaches to it, with their relative advantages and shortcomings.

But the very first thing the law student should learn in such a course is to read critically statistics presented to him as evidence of whatever facts are alleged. This is the counter-poison to the not unreasonable adage that anything can be proved with statistics.

TRAINING FOR SOCIO-LEGAL RESEARCH: COLLEGE PRIOR TO LAW SCHOOL, SELF HELP AND ON-THE-JOB TRAINING

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In this paper I shall review three categories of training—college prior to law school, self help, and on-the-job training. I was given these categories, presumably because these categories were, in large part, my education. If this assumption is true, the first and most obvious statement to be made is that such training does not lead to any high degree of competency in the required areas. This does not mean, however, that I have declined to try my hand at various forms of empirical research. While it is always dangerous to make an *ad hominem* argument, my own experience forces me to suggest that, for law professors at least, there must be various levels of competency and that even at the lower levels useful research is possible. No one likes to admit doing worthless projects.

This leads to two further introductory points. One cannot fail to see a little irony in the use of "experts" to present papers on education for research using social science methods. Surely the use of "experts" is a poor model, for this audience, of proper social science methodology. At the very least, we should have, by questionnaire if not by personal interview, discovered the

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type, extent, and "quality" (that horrible word to a true believer) of the methodological training of a random sample of lawyers and law professors who have published "law-related social research" during the last decade or two. A competent panel then could judge both the methodology and the quality of the research published by our sample. With this model, we could then, presumably, make intelligent remarks as to the relative merits of the various types of training. But not having done so, we are thrown back to our usual substitute for knowledge—the so-called expert opinion.

The other preliminary point relates to my earlier comments about the level of competence. I assume that we desire not only an increase in the total amount of law-related social research produced by those who are "competent," but also—and perhaps more importantly—an increase in the total number of lawyers and law professors engaged in such research at a minimally competent level or better. We want this increase for at least two reasons.

First, most feel that only with such research will the use of law to build the kind of society we want become possible. As more competent scholars are engaged in this task our legal system will become more efficacious. Second, bringing new colleagues into the fold lends power, prestige and validity to this type of commitment. I do not know the point at which the critical mass is reached—the University of Wisconsin Law School being a good example of the school that has reached that mass, but if, perhaps, half the faculty is committed to social research, the whole faculty, of necessity, becomes committed to a greater or lesser extent. Social science interest and competence become a relevant factor for faculty appointments. The lonely road of the iconoclast scholar should be revered, but most law professors are not immune to the praise and admiration of their colleagues. Thus, the existence of a critical mass will increase the total productivity.

If we want our untrained colleagues to become more active in social research, we must be willing to pay the possible price of encouraging them. Obviously there are dangers. Untrained or even partially trained people may do poor quality research. Both the social scientist and the traditional legal scholar will be less than thrilled with the results. Social science research in law-related areas might once again decline as lawyers and law faculties retreat to the "safe" law books.

We all recognize this problem, but I still encourage my colleagues to become empirically oriented. I do this for two reasons. First, the need to know is so great that even "poor" research is better than none. As Harold Lasswell suggested to me 15 years ago, when a field is relatively untapped, any research will "sensitize" an area, to use his phrase. Research that is merely descriptive is needed. While such research may not educate the investigator nor solve major problems, it will perhaps induce others who are more competent to undertake a better and more penetrating study. Second, much of the research by the "untrained" is actually fairly good. College training, self help, and on-the-job training does produce, if not competency, at least those who can add to our store of knowledge and who learn to ask some of the right questions.

What, then, are the strengths and weaknesses of the various training possibilities when tested both for their ability to raise the level of competency and to increase the number of scholars entering the field? How well do these three types of education compare with alternative forms?

College prior to law school, as a training technique, presents problems. Obviously it is a factor that we in the law school can control only indirectly at best. Until such time as law schools are ready and willing to control pre-law education (which I do not foresee in the immediate future) our students and, therefore, our future attorneys and law professors may or may not have had any social science training. I doubt that in the foreseeable future, Boards of Bar Examiners will deny admission to a prospective lawyer who could not do regression analysis. A law school admissions committee could check undergraduate records for relevant courses, but this seems unlikely. Independent of our actions, however, a greater proportion of law students who have either majored in or been exposed to work in the social sciences are being graduated. Thus the pool of potential lawyers and faculty members with some undergraduate training, and probably more importantly, a greater interest in social or behavioral science methodologies, is expanding.

Undergraduate training has a couple of strengths and weaknesses. The quality of education in the social or behavioral sciences is going up. Surely any student majoring in sociology or psychology, or probably in political science or business, will have some knowledge of basic social science techniques. Many of today's social science majors actually do some empirical research before receiving their degrees. Political science majors today are taught considerably more methodology than I was 20 years ago.

There are, however, at least two major weaknesses in undergraduate training. First, it comes at a time when the student not only does not "know the law" but probably has not even decided to go to law school. Such training will not and cannot be oriented towards "law-related social research." If you assume that skills are independent of subject matter, then early training is not a major problem. But I suspect that, at least in comparison with other methods, the student's lack of knowledge about the legal system will have its negative effect.

The other weakness is lapse of time. A college student may have learned about standard deviation, but, 10 years later, when he is teaching law and wants to do an empirical project, he will have to learn it all over again. Unused skills tend to deteriorate rapidly. The passage of time presents an additional problem, since our behavioral science friends have improved their techniques through the years. A person whose learning is 15 years old probably will have to upgrade his competency in terms of the new techniques.

On balance, then, undergraduate education, while helpful in building interest and a basic understanding of techniques, seems to have some major weaknesses. It cannot be relied upon as the best method of preparing lawyers to undertake this kind of research.

Self help and on-the-job training should be discussed together. With minor variations, each has the same strengths and weaknesses. The strengths are the most easy to define. Ability plus commitment is the key. Given a high level of intelligence and law school training in conventional legal skills, the techniques needed for a law-related empirical project can be learned. There is truth in the old myth that lawyers (and law professors) can learn their clients' or expert witnesses' business well enough to function effectively.

The basic methodological skills needed to do a reasonably competent job of law-related empirical research are not that difficult. The law professor

starts with the advantage of knowing the institutional setting, and something of the operating dynamics, of the field of inquiry. In addition, information about techniques is readily available. Methods books of various levels of sophistication abound. Auditing courses in sociology or psychology is always possible. Buying lunch for a colleague in the sociology department will sometimes solve sticky problems.

The other half of the key—commitment—is of equal importance. Most law professors hate to produce shoddy work. While some traditional legal scholarship is not of top quality, most of us publish only when we think our product is sound. Hence the commitment to do empirical research may be sufficiently motivating to induce law teachers to learn the necessary skills.

However, the books will not be read, courses audited nor lunches bought without this commitment. And here lies the major weakness of self help and on-the-job training. These approaches do not produce commitment. In fact these two approaches undoubtedly stand as a barrier to commitment to empirical research. While many will agree that such research is vital to an understanding of the legal system, the need to first learn the technique will deter action.

The second major weakness in self help and on-the-job training as an educational device is the fact that such education is, by and large, not supervised. While it is fashionable to extol the virtues of self-learning, the older assumption that a professor knows more than a student surely has some validity. A professor's direction may be nothing more than a continuing critique of the student's learning process and an occasional suggestion of areas or concepts missed by the student. But this help is invaluable. There is considerable danger that a self-taught behaviorist may either flounder off the track or, more importantly, completely miss some of the important concepts of the technique that is being studied. In other words, self help and on-the-job training suffer the traditional danger of producing the half-educated researcher.

A problem that deserves special mention is whether the self-taught man who has not received critical evaluation of his work will internalize the ethics and values of the professionally trained social scientist. Most law professors do not cheat, intentionally, when citing precedent in traditional works of legal scholarship. It is too easy to get caught! Will self-taught social scientists be so scrupulous with empirical data? Graduate social science training inculcates professional norms for scholarship. Assuming that social scientists are neither more nor less honest than law professors, self-taught legal scholars who lack formal exposure to the social scientists' professional norms, are in greater danger of inadvertently or wishfully manipulating their data.

Self help and on-the-job training possesses an additional danger even for the committed. Once an idea for a research project of any type has been generated, there is considerable internal pressure to get-on-with-it. While the scholar may be committed to doing good work, it will be easy, when planning to do empirical research, to skip or slight the necessary background education. The researcher may decide too quickly that he knows enough to get started. While the results may have some value, they are not likely to be of the same quality that other types of training will produce.