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## The Use, Non-Use, Misuse of Applied Social Research in the Courts

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curiosity about the consultant role or to those who teach in the practice areas. For those who are ready to try their hand at consulting, the section on establishing yourself as an entrepreneur, which could have been the heart of this text, left me wishing for more.

**The Use, Non-Use, Misuse of Applied Social Research in the Courts**, edited by Michael J. Sacks and Charles H. Baron. Cambridge Mass: Abt Books Inc, 1980. 189pp. Hardback

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The title of this modest but useful book casts a rather longer shadow than accuracy should allow. While not light, the articles are easy to read. One needs no training in statistics or advanced research methods, though both would enhance the insights which have been drawn. There are no equations or long, jargon-filled paragraphs that so torture the readers of some professional journals.

Although not new, the book is still relevant, possessing, if not a timeless quality, at least an enduring value. The collection of articles and comments provides a panoramic yet insightful view of the issues that arise when courts in modern American society confront problems that require—or at least would benefit from—social scientific analysis. I found this of value from both of my perspectives; i.e. as a practicing trial attorney and as a sociologist.

The book follows the conference style, having one or more short introductory papers preceding a transcription of the panel discussion that followed. The introductory papers are brief, often only a page or two. The treatment is never exhaustive, but most papers offer something to make their inclusion worthwhile, if only a new twist on an old topic. The comments that follow the introductory papers are often distracting, but valuable because they reflect the way members of certain communities approach the issue that had been discussed.

An exception to this generally favorable evaluation is Michael Kirby's piece which purports to "provide a framework for understanding the effect and value of one form of applied social research, project evaluation, upon the criminal justice system." The piece is not badly written. It simply states the obvious: funding sources must understand enough about evaluation to order a useful study; research methods must be explained simply so that the people who pay for and use it can understand it; research methods must fit research problems; and valid evaluation requires an experimental or quasi-experimental design. Kirby's is not the only inclusion that suffers from the malaise of stating the obvious, but it is typical of one troubling characteristic of some of the articles

and highlights a problem that this kind of book faces when trying to relate to so many different audiences.

Lawyers and judges who read this book are unlikely to know what a quasi-experimental design requires or how that relates to validity. Yet to the social scientist, the concept of an experimental design and its derivatives is likely to be so familiar and the problems of doing applied research so painfully apparent that nothing much is added. Fortunately, articles that contribute very little to the discussion are far outnumbered by articles that provide useful insight and add new thought. It must be added that Kirby may have fulfilled his given assignment at the conference very well, but an assessment of the value of this book some ten years later necessarily applies different, and by that difference, harsher criteria.

An example of the kind of analysis that has as much value now as ten years ago (and probably will have ten years hence) is contained in the section titled, "Misuses of Applied Social Research." Ted Marvell's discussion of the misuse of research begins with the examples of the use of IQ tests in placement decisions in secondary schools and Judge Jerome Frank's use of his own survey to help him decide in a case of unfair competition. Testing whether an independent variable, such as IQ score, has an effect on dependent variable, such as placement in special groups for the educable mentally retarded, presents a classic case for which social scientific analysis should be especially well suited. Apparently the judge agreed. There is, however, a problem. Judges are usually not familiar with the principle of replication, let alone validity. With a problem to solve and no practical means to deal with issues that he did not understand, the judge simply latched onto one articulate, but probably flawed, piece of research. No doubt that this seems preferable to Judge Frank's questioning of some adolescent girls in the second example and calling that a survey.

Marvell's article defined one theme from which variations were developed in other articles: judges have disputes to settle, lawyers have cases to win, and social scientific research is primarily valued in a trial for its capacity to aid in one or both of these endeavors. It might have been argued more forcefully that academics have articles to publish for promotion, tenure, and merit raises.

This leads me to what I saw as the major shortcoming of the book. The conference and the book are dominated by academics, consultants, and staff attorneys for court support organizations. Not enough real lawyers participated. Having recently moved from academia to trial practice, I am acutely aware of the difference between what seems now to be the professor's luxury to ponder and critique, with few, if any, materially consequential effects, and the practicing lawyer's need to produce a certain result. Unlike the professor, the lawyer often receives dramatic feedback in fairly short order from either judge or jury. The result is almost always materially consequential, though the degree of consequentiality varies widely.

Addressing this issue from a different angle and at a different level, the chapter titled "Legal Concepts and Applied Social Research Concepts: Translation Problems" sets out the richness and complexity of the variance between legal reasoning and social scientific reasoning. I found this chapter so seminal that I wished it had been placed earlier in the order of presentation and given double or triple the space. Leonard Saxe, drawing on Thomas Kuhn's development of the notion of paradigm, provocatively sketched the differences in symbolic systems that value change versus those that value order, as well as those that employ a nomothetic versus those that use an idiographic approach to understand and explain human behavior. Robert Post skillfully extended the conversation by introducing Jurgen Habermas' division of modalities of knowledge into the empirical-analytic and the hermeneutic. Most judges (and by training and socialization, most lawyers) utilize a hermeneutic perspective. *Stare decisis* is, at base, a way to reinforce established values, whereas the major point of empirical analysis is to discover new patterns in the data. In the final selection of this chapter, H. Laurence Ross raises in a creative and practical way, the issue of the twin goals of the courts, pursuit of truth and maintenance of order.

The middle chapters of the book cover issues such as the value of a specialized Science Court to provide adjudication of technical matters, the basic research concepts that lawyers and judges need to understand and the basic knowledge academic researchers need to have about the courts. A set of case histories are also included that are just as valuable today as when presented. Indeed, the example by David Baldus is all the more interesting in light of the recent statement by the Supreme Court about the place of social scientific research (especially the Baldus study) in deciding death penalty cases. Finally, the often good reasons the courts have for skepticism over applied social research as evidence is illustrated by Justice Robert J. Hallisey with examples from his own courtroom.

In summary, there is much in this book that will be valuable for a long time. Its range is at once its weakness and its strength. I can envision usefully assigning parts of it in both undergraduate and graduate courses and in professional workshops. Yet, a substantial number of chapters would be out of place at any given time in all of these settings. This book, then, must be employed selectively. Having done that, it should prove quite useful in a variety of venues.