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The Use of Social Science in Public Interest Litigation: A Role for Community Psychologists¹

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This article argues (to the legal community and especially to community-oriented psychologists) that, despite some philosophical and methodological differences between law and the social sciences, research in community psychology is an especially appropriate medium for deriving much of the expert testimony that is central to public interest/social change litigation. Judicial attitudes toward the use of social scientific knowledge throughout this century are discussed, with the landmark Brown v. Board of Education decision viewed as the turning point, not only for civil rights litigation but also for the judicial recognition of social research. While the courtroom use of social science theories and testimony has generally expanded, community psychologists have yet to play as major a role as their method and field of inquiry warrant. It is concluded that community psychologists and those involved in public interest litigation need to pay closer and more systematic attention to one another's work.

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By way of circumscribing the conditions under which the judiciary may legitimately address issues of political and distributive justice, Neier (1982) noted that the courts serve an "informing function" on behalf of disenfranchised minorities, subject to representative ratification. According to Neier, such a mechanism, rather than usurping the authority of elected officials, helps make pluralism work and makes government *more* representative. An informing function, however, is only as effective as the quality of the "information" it places on the public agenda. Expert social science testimony has provided lawmakers with an important source of such information (DeLeon, 1986; Monahan & Walker, 1986).

Community psychology represents an especially promising medium for deriving the type of information that is central to public interest litigation. Community psychologists are increasingly voicing an interest in linking their work to issues of law and public policy (Mulvey, 1985; Wilcox, 1985). In a survey ($n = 523$) of members of the Division of Community Psychology (27) of the American Psychological Association (APA), Linney (1986) reported that more respondents included "increasing discussion with law makers and governing bodies related to public policy" among the five most important substantive issues for community psychology than any other in the field. Yet it is not clear how this concern for the direct communication of our work to policy makers has manifested itself. As Division 27 Presidents, Reppucci and Seidman both echoed, on behalf of community psychology, Devan's (1982) advocacy for a formal involvement among psychologists in important policy issues where our knowledge and skills are relevant. While other areas of psychology have grown considerably in the volume and sophistication of their response to this call (DeLeon, 1986; DeLeon, O'Keefe, Vandenbos, & Kraut, 1982), however, community psychology has remained comparatively reticent.

Our field's promise for supporting public interest legal advocacy remains largely unfulfilled due, at least in part, to our lack of familiarity with both the historical and potential roles of the scientist (as opposed to practitioner) as expert witness. The primary goal of this article is to introduce community psychologists to some of the past and present philosophical and procedural issues surrounding the use of social research in litigation for social change. Only with a clear understanding of these issues can we hope to multiply the impact of our work by carrying its dissemination directly to the courts and other seats of law-making power.

Problems in the Judicial Use of Social Research

Any community psychologist contemplating professional involvement in legal matters should first be familiar with the many interrelated sources

of tension between the perspectives of law and social science (see Mulvey, 1985; Robinson, 1980; Rosen, 1972). One fundamental difficulty is that law and public policy are capable of granting greater rights and a higher dignity to humans than is social science. Some critics have argued that social science—insofar as it tends to treat humankind as merely a population of subjects—may be limited in the cogency with which it is able to speak to issues of law and public policy (Gaylin, Glasser, Marcus, & Rothman, 1978). Indeed, it has become an axiom of community psychology that as long as they continue to focus on human *needs* rather than human *rights*, social scientists will be better able to inform "the state as parent" than as provider and protector of rights (Rappaport, 1981). Even when social scientists were on more familiar institutional grounds, during the War on Poverty for example, we had difficulty applying our data to issues of public policy and communicating those data to the public (Rainwater & Yancey, 1967). As social reform movements have shifted from the Progressive Era tradition of programs and institutions toward a more civil-libertarian model that includes the use of adversarial tactics (Rothman, 1978), social scientists are more and more being asked to help settle matters in a mode to which we are even less accustomed and for which we are ill-trained.

More than other areas of the law, public interest law shares social science's focus on the effects of social phenomena, not only on a given individual but also on groups or generalized classes (i.e., populations). Social cause advocates also tend to emphasize factual evidence, including scientific data, whereas other lawyers are more likely to rely primarily on reasons, language, and precedent. Still, there are many fundamental differences between the scientist's epistemology, with its prospective search for new "precedents," and the more retrospective, "casebook" orientation of *all* areas of law. For example, insofar as jurists must interpret and apply rules to fit particular fact situations, their formal principles and criteria of valid demonstration and inference are deductive. The working logic of the scientific method, on the other hand, requires induction to precede deduction, as we try to discover general laws that are consistent with specific empirical data (Rosen, 1972).

Furthermore, law is a "practical art" of partisan advocacy and rhetoric, whereas social science is a theoretical approach to (presumably) impartial explanation. The effect is that legal testimony often requires black and white definitions to be imposed on the same-fact situations that social scientists view through the gray-colored lenses of statistical probability and multivariate causality. Although the courts do allow some room for probabilistic research evidence (Loftus & Monahan, 1980), the situation is exacerbated when a particular scientific "finding" is taken out of the comparative context of a broad range of data sets, methods, theories, and disciplines and

given the weight of a codified and hierarchically authoritative legal pronouncement.

From a more cynical perspective, perhaps the major source of legal resistance to social science has been the lawyer's "fear of the loss of his age-old function as intellectual broker, and of his ultimate replacement—in terms of power and prestige—by the specialist and expert" (Cohen, 1959, p. 68). Levine et al. (1978) attributed many of the problems of using social science data in the legal mode, even doctrinal ones, to differences in the professional cultures of lawyers and scientists. These authors argued that statistics provide a necessary and powerful form of description and that greater legal-social science interaction is needed to work toward a mutually illuminating reconciliation of the divergent orientations.

The basic problem for both law and social science is that, in a very real sense, they do not exist in isolation of the social world in which they are embedded. For law, this means that it must define fact situations in ways that are understandable and compelling to society—ways that will not be undermined by empirical findings and popular theories. For social science, social dependence means that the ultimate source of interest, investment, and even induction in scholarship lies in its relevance to common social concerns. For no field is this more true than for community psychology.

Thus, given the above differences, it is tribute to the pull of social dependence that law and social science interact as much as they have since *Brown v. Board of Education* (1954). Prior to that, their meeting grounds were "rather like the parlor in the Victorian home in which the girl and her suitor can get together—but not get together too much" (Riesman, 1951, p. 32).

EARLY JUDICIAL RECOGNITION OF THE SOCIAL SCIENCES

If one observes the history of judicial reasoning, it is clear that the Supreme Court's "opinions and decisions [have] depended on the kinds of facts it has used, and these. . . invariably reflected the thinking and teachings of the times" (Rosen, 1972, p. 22). It is hard to imagine how it could be otherwise, given the judiciary's ultimate dependence on public approval. When the public conscience was dominated by the overtly racist ideology accompanying slavery and, later, Social Darwinism, for example, the Court interpreted the Constitution accordingly, as in *Dred Scott v. Sandford* (1857) and *Plessy v. Ferguson* (1896). When social science became a more generally accepted arbiter of "facts," it inevitably played a more important role—both

directly and indirectly, for better or worse—in determining the Courts' understanding of those facts.³

The use of social science data for informing legal arguments is not as recent a phenomenon as some might think. Louis Brandeis (1916) was probably the first to comprehend the progressive and informing potential of greater judicial scrutiny of social facts. Up to his time, a *laissez-faire* Court had used "judicial notice" of facts mainly to restrict social welfare legislation. Those opinions, while heavily colored by Social Darwinist thought, rarely included authoritative scientific data, such as that found in Brandeis' famous brief in *Muller v. Oregon* (1908).⁴ In addition to inventing and championing this effective vehicle for presenting scientific evidence in *support* of social welfare legislation, Brandeis went even further in arguing that the presumption of legislative constitutionality (see Footnote 3) may be overturned by "some factual foundation" (*St. Joseph Stock Yards Co. v. U.S.*, 1936, p. 83).

By the early 1920s, Benjamin Cardozo (1921) led a growing number of liberal, intellectual jurists advocating a formal role for social scientists in assisting the judicial review process and in helping to bridge the commu-

³Indeed, Rosen (1972) argued that jurisprudence itself has become more "factual" since the advent of "substantive due-process" litigation. The Fifth and Fourteenth Amendment protections, that "life, liberty, and property" shall not be deprived "without due process of law" were originally restricted to such procedural safeguards as the right to trial by an impartial jury and the right to counsel. By the late 19th century, the courts had stretched the meaning of due process to ensure the protection of private property. Eventually, the substantive elaboration of the due-process clause (along with the Fourteenth Amendment's "equal protection" clause) became the bedrock of our individual and corporate civil liberties. It also meant that the Supreme Court would be called upon to review the "fundamental fairness" of State and Federal legislative policies (cf. Ealy, 1980). Because of the traditional principle that all legislation is presumed constitutional unless proven otherwise (i.e., "presumptive constitutionality"), a law could only be subject to judicial review through the adjudication of the factual basis upon which the law was passed. The social sciences, of course, provided a novel method and a certain authority with which to introduce "new" facts or challenge "old" facts.

⁴In principle, the "facts" of a given case are supposed to be admitted only through the rules of evidentiary procedure. Judges have the authority, however, to give "judicial notice" to facts that are presumably beyond adversarial dispute: Rule 201.b of the *Federal Rules of Evidence* (1975) states that judges may take notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

⁵In *Muller v. Oregon* (1908) Brandeis filed a 113-page brief (supporting the state's maximum-hour legislation for women) which relied heavily on medical and social science data. Brandeis may actually have borrowed this approach from Justice Harlan's dissenting opinion in *Lochner v. New York* (1905). In *Bunting v. Oregon* (1917), even Felix Frankfurter, who often noted the immaturity of the social sciences, presented a "Brandeis brief" of 1,021 pages with only eight precedents cited and the rest was empirical data. Frankfurter asserted, "it is now clear that 'common understanding' is a treacherous criterion both as to the assumptions on which such understanding [of the act] is based, and as to the evil consequences, if they are allowed to govern. Particularly in the last decade science has been giving us the basis for judgment to which, when furnished, judgment by speculation must yield" (p. 432).

nification gap between courts and legislatures. Similarly, Oliver Wendell Holmes's plea for a more realistic constitutional law helped advance sociological jurisprudence, whose basic tenet holds that abstract principles of law can be "neither interpreted nor applied in a responsible manner without an understanding of the needs of the people and the effects of the law" (Rosen, 1972). Finally, in order to demythologize law, Roscoe Pound (1959) called for no less than a "legal revolution through the absorption into the laws of ideas developed in the social sciences" (p. 431). While the intellectual seeds of Pound's "socialization of law" were already in evidence in the first half of this century, they only reached the practical maturity of widespread acceptance with the *Brown v. Board of Education* decision in 1954.

Pound had, in Cardozo's day, said of the court's lack of access to social science expertise:

We need to work out a better apparatus of informing the courts as to the social background of the statutes on which they pass, so that instead of viewing them consciously or unconsciously on the background of the pioneer society of the frontier era of our institutions, or on the abstract background of the formal, abstract economics of a generation ago, they may be judged with reference to the actual environment of the industrial society of today (quoted in National Consumer's League, 1925, xxvii).

THE BROWN DECISION

The case of *Brown v. Board of Education* (1954) laid the foundation for a greater judicial role for community psychology and other types of social research. The reason for this has to do not only with the landmark legal and social implications of the decision but also with the extent to which social science input had been solicited and formally recognized. Why did the Court suddenly raise the value of social researchers' legal currency in such an important and controversial case?

One reason is that the "separate but equal" doctrine had been tried often since *Plessy v. Ferguson* (1896), on the basis of legal reasoning and particular misapplications, and never formally rejected. Just as important as the lack of alternative reasoning, though, was the undeniable extent to which the empirical knowledge of the social sciences had developed since the Social Darwinist reasoning of the *Plessy v. Ferguson* opinion. Our whole concept of "truth" had become so intimately tied to "science" as to be virtually synonymous with it. The research and public-image gains made by the social sciences during and just after World War II probably even exceeded those of the natural sciences.

Still, the use of social science in the *Brown v. Board of Education* decision incited a heated controversy in law, the social science community, and in the popular media. Opponents of sociological jurisprudence, in general,

and of its *Brown v. Board of Education* application, in particular (Van den Haag, 1960), were decidedly a minority among social scientists. They, along with their journalistic counterparts (Kilpatrick, 1962), relied heavily on a premise of the innate inferiority of the black race—a notion that had long since become morally and scientifically untenable. Besides, both of these groups were attempting to challenge the judicial use of social psychology by positing merely older, less reputable psychosociological theory. It was illogical.

The prominent jurist Edmond Cahn (1955) was representative of a widespread opinion within law that supported the *Brown v. Board of Education* decision but opposed the Court's mixing of law and social science. Their principal argument was that social science data are too inconsistent and undependable and that "shrewd resourceful lawyers can put a Brandeis brief together in support of almost any conceivable exercise of judgment" (Cahn, 1955, p. 154). Both Cahn (1955) and Black (1960) offered compelling arguments that segregation, especially as practiced in the South, was inherently "unequal" and conferring of inferiority and humiliation. Then why did the Court not simply take judicial notice of that fact rather than invoking controversial scientific data? Ironically, it may have been precisely because the Court knew it was bucking a firm precedent and entering a heated public debate that it wished to garner *all* the supporting evidence that was available. Without data, there was a danger that the arguments on both sides might merely have become so much moral posturing and empty assertions. As Thurgood Marshall put it in 1952, the "separate but equal" doctrine had become so ingrained that overwhelming proof was sorely needed to demonstrate that equal educational opportunities for Negroes could not be provided in a segregated system" (quoted in Rosen, 1972, p. 130).

Opponents of a judicial role for social science pose the following question: if the research findings relevant to *Brown* (or any public interest case) were to change, would we not be obliged to support the reversal of that decision? Indeed, the recent exchanges between Cook (1979, 1984) and Gerard (1983), on whether the relevant research findings were, in 1954, an adequate basis for making policy decisions, suggest that the empirical proof was less than "overwhelming." Yet, the above question is not one that an expert, in reality, needs to answer definitively. The expert need only decide (a) how to interpret the data, (b) whether the expert's values and conscience permit him or her to present the data to court officials and (c) if so, how the data will be fairly presented. It is then up to the lawyer or judge to decide whether to treat the contrary data as sufficient evidence for reversal.

According to Loftus and Monahan (1980), the obligation to present both sides of an issue is a matter of some debate. While there may be an ethical obligation to "tell the whole truth," they acknowledged that Rule 705

law making upon clearly indisputable facts, the practical choice is often between proceeding in ignorance and following the uncertain, tentative, and far from indisputable teachings of social science such as they are, for the simple reason that clearly indisputable facts are unavailable" (Davis, 1964, p. 87).

Admittedly, one problem with this perspective is that the procedural difficulties in using data from community psychology or any other field are closely associated with the quality of and consensus on those data (Loftus & Monahan, 1980). As Brest (1975) stated, "the problems arise when the court's choice is between (1) a constitutional proscription based on controversial social science evidence and (2) no constitutional proscription at all" (p. 953). Indeed, for the sake of its own authority, the court should avoid resting primarily on shaky social scientific evidence. If the quality of the data is key, however, it also stands to reason that, as its theoretical and empirical foundations harden, the scientific study of social problems will continue to provide a firmer structure with which to support legal remedies to those problems (Monahan & Walker, 1986).

The prospective expert witness should be aware that, no matter how strong the empirical evidence, courts will be less congenial to expert testimony on some issues than others. For example, another social cause litigation campaign which has relied heavily on social science support has been the effort to abolish capital punishment. Statistical analyses of disparate racial impact have been used extensively in the litigation campaign to halt executions, although they have generally not been as successful as procedural arguments. In the landmark case *Furman v. Georgia* (1972), which temporarily outlawed the death penalty, Justice Douglas's majority opinion cited four major studies in support of its decision. In a concurring opinion, Justice Marshall cited these and more than 20 other social science publications primarily on (a) the racially and sexually discriminatory sentencing of the death penalty and (b) the negligible marginal deterrent effect of executions.

Yet despite all this evidence and the concerted efforts of liberal judges, the NAACP Legal Defense Fund, and the ACLU, death sentences are once again being handed down and carried out with startling regularity. Thus, as Berooff (1987) stated, "Courts will cite psychological research when they believe it will enhance the elegance of their opinions but data are readily discarded when more traditional and legally acceptable bases for decision making are available" (p. 57). Even if social science is viewed by judges and lawyers as more of a tool than a guide, however, it only stands to reason that they should understand better how that tool works and where it is vulnerable.

Neither should these limitations discourage the participation of community psychologists in cause litigation. Legal principles, especially Constitu-

of the *Federal Rules of Evidence* (1975) allows the onus of discovering contrary facts or data to be placed on the cross-examiner. Loftus and Monahan further noted that when the data support values the expert opposes, he or she can refuse to testify on the grounds that immoral ends are "no less immoral when pursued with scientific means" (p. 281). Whether the credibility of expert testimony is impaired or its impact trivialized by a lack of convergent opinion is itself an empirical question that will be answered not by the scientist but by judges, lawyers, and juries.

POST-BROWN CONCERNS WITH THE JUDICIAL USE OF SOCIAL SCIENCE

It has become clear in the three decades since *Brown v. Board of Education* that as the power, sophistication, and reliability of many areas of social science research has grown, so has the scope of social scientists' role in judicial and legislative decision making. Like other "traditionalists" opposed to sociological jurisprudence, Cahn (1955) underestimated the legitimacy of modern social science methods and findings while overestimating "the Text" as "the beginning and also the end of [a judge's] process of judging. As he judges by it, he knows he will be judged by it" (p. 35). In Cahn's unmeasured analysis, the Constitution provides a judge—not only with "textual authority"—but also with "personal valor" and even "moral salvation" (p. 36). As Allen (1966) has stated, however, and as the history of constitutional adjudication bears out, "no words are so plain and unambiguous that they do not need interpretation in relation to a context of language or circumstances" (p. 506; see also Rose, 1967).

This is especially true in public interest litigation. For, as Neier (1982) put it, "the common responsibility of all those engaged in public policy litigation is to persuade. Because they circumvent the ordinary political process, they must be all the more persuasive" (p. 244). That being the case, naturally cause litigators will use all the techniques of suasion at their disposal, including empirical findings and legal arguments. Indeed, in *Katzenbach v. Morgan* (1966), Justice Harlan made the case for using scientific data even more assertively: "Decisions on questions of equal protection and due process are based not on abstract logic but on empirical foundations" (p. 668, dissenting opinion).

Once the centrality of factual evidence was admitted, then the selection of the best sort of facts became an empirical question. That is, what domain of social knowledge can most accurately and reliably answer what particular questions? Hence, the most compelling, if cynical, reason for using social science may be that, while ideally "anyone would prefer to found

that school integration results in higher black employment, the Supreme Court—which in recent years has been more sensitive to employment discrimination than housing or educational discrimination (Neier, 1982)—might be more willing to order desegregation across city boundaries or some other remedy.

Furthermore, evaluation research may be used most effectively to assess *experimental* programs and policies in educating the disadvantaged. Focusing on programs and policies has the further advantage of not directly threatening teachers or administrators and thus promises greater cooperation. Once an effective policy or set of programs is found, if the city cannot or will not implement them, the information can then be used as evidence in testifying with the administration, legislature and, if necessary, courts for greater resources or accountability. If desegregation once again becomes the primary issue, the information can be used to argue that suburban schools offer programmatic advantages not afforded by city schools.

Not all program evaluators or evaluations would be appropriate to expert testimony. In court, the generalizability of findings is at least as important as their internal validity (Bersoff, 1987; Loftus & Monahan, 1980). Many a finding based on experiments using college students as subjects has failed to convince either judge or jury of its relevance. That is why methodologically rigorous field research may hold even more weight than well-controlled laboratory studies. Similarly, evaluations designed to generate very specific answers to setting-specific questions are not of much use in describing the general body of knowledge surrounding a given issue across many different settings. Public interest cases, by definition, carry the weight of broad class actions. Thus, even if it were possible to examine the facts of a public interest case through an evaluation conducted at the setting in question, this might only encourage a narrowly defined decision, affecting just the particular parties and setting involved. By virtue of our special concern for developing theory through the interdependent context of practice and research (Kelly, 1986), community psychologists should be especially well prepared for the strong external validity required for public interest testimony.

OTHER AREAS OF COMMUNITY RESEARCH RELEVANT TO PUBLIC INTEREST LAW

Education is just one type of legally enforceable public accountability. Another area of cause litigation that is pressing in need of reliable and objective research findings is accountability in the decision to institutionalize or provide community-based programs for the mentally ill and retarded, convicted criminals and delinquents, and the elderly. Whether the legal argu-

tional ones involving matters of public interest, must—by virtue of their dynamic factual context—leave room for case-by-case interpretive adjudication. They must allow for a changing world of value preferences *and* factual understanding (Rosen, 1972). Yet courts must try to do this as objectively as possible. The use of social science is merely a systematic extension of that effort just as legal reasoning is a systematic extension of formal logic. Both lend consistency and reliability to findings. It would be counterproductive to disregard either. Courts currently operate on the basis of biased judicial and jury (i.e., individual or small group) impressions of the norms and values of local communities. An important contribution that community psychology could make to all levels of the judiciary is to provide local area analytic methods in order to examine those norms and values more objectively.

EVALUATION RESEARCH AND PUBLIC ACCOUNTABILITY

Program evaluation has been recognized as one of the most common and important forms of research conducted by community psychologists (Heller & Monahan, 1977). Although some have explored the applicability of the jury trial as a model for evaluation research (Levine et al., 1978), let us examine the applicability of evaluation research to public interest law. For example, replacing school desegregation on the current public agenda, to a certain extent, has been concern over accountability in education. The political importance of this issue has become increasingly evident as the base of concern has broadened and the legislative and executive branches have become more attentive. If their efforts fail, the Court may once again be called upon to deal with inequities in educational opportunity. Neier (1982) has noted that proponents of educational accountability "have not found the question susceptible to resolution in the courts" (p. 67). Part of the problem may be the mutual ignorance of the courts and most educational evaluators. Furthermore, many evaluations support the status quo by pulling for positive, or at least neutral, results. This is so not only because the educational bureaucracies hire the evaluators but also because they take primary responsibility for setting the research questions and disseminating the results.

If more researchers, independent of the school or any public service system, were given a free hand in evaluating that system, they might produce more critical results. For example, they might be able to distinguish between poor educational opportunities in city schools and rich opportunities in suburban schools. Such research may need to change its outcome variables away from traditional test scores and grades which the court might not accept as culturally unbiased or deserving of special protections. If it could be shown

ment is couched in terms of "right to treatment" of "protection from harm," the key question remains: Is effective treatment and humane care possible within institutions (see Rothman, 1980)? If so, distributive justice would be called for and aimed at providing institutional resources. If, however, institutional care/incarceration is inherently invalid, as many litigators suspect, then corrective justice would be prescribed and aimed at more humane and effective deinstitutionalization.

Ultimately, like so many issues of public interest, the harm or effectiveness of institutional treatment boils down to an empirical question that is not likely to be answered in quite the definitive terms to which the courts are accustomed. Researchers may find that certain treatments work for certain problems with certain populations at a certain rate of success. Hence, the combination of corrective (deinstitutionalization) and distributive (community treatment) justice that has been called for is an appropriate resolution. Where the current policy has failed, it has failed for political and economic reasons—not for the limits of our empirical knowledge (Roesch & Golding, 1985).

It is important for lawmakers to understand that the issue of confinement is actually separable from that of treatment. Confinement in the mental health system (if not in corrections) has become a practical question based on danger (to self or society) or on the client's ability to live independently. These conditions are treatable, however (the latter more so than the former), and subject to assessment procedures.

This issue bears on political justice to the extent that professionals and communities who depend on institutions for employment have a stake in their maintenance and have influenced legislative and administrative bodies in limiting the transfer of resources from confinement to more efficient community programs. Again, compelling research findings might enable the judiciary to address even the political and distributive issues related to confinement and to dispense distributive justice *outside* as well as inside institutions (and not only for the elderly and retarded but for the criminal and the mentally ill as well).⁶

Field research methods can also be used to test the impact of laws, executive policies, and judicial decisions on the community. Interrupted time-series analysis of any long-term data sets (e.g., crime and victimization reports, mental health records, epidemiologic data, etc.) could be used to test the effects of landmark litigation or legislation itself (Campbell, 1970; Mulvey & Hicks, 1982). Those trained in need-assessment methods could help inform the courts and other agencies in ensuring adequate human service

⁶The higher rate of rehospitalization among the mentally ill than among the retarded is admittedly due only in part to the courts' provision of distributive justice for the latter outside of asylums (Neier, 1982, p. 191). Even if community services for the mentally ill were as adequate as they are for the retarded, the episodic nature of chronic psychosis would still result in the "revolving door" phenomenon for many of the mentally ill.

resources for various populations and geographic areas. Research can even be used to assess the extent to which political rights, or empowerment (Rapaport, 1981), as opposed to social needs, have been addressed by a given community. An action component of such research could then assist community development through greater citizen access to and participation in local political structures (see Wandersman, Florin, Chavis, Rich, & Prestby, 1985), including the courts.

Expert testimony is far from being an open forum and our access to it will always be limited. For those community psychologists unable or disinclined to appear in court, there are other roles to be played beyond the more conduct and general dissemination of relevant research. One such role is to submit a "friend of the court" (*amicus curiae*) brief. This may be the most fruitful way Division 27 (through the APA, if necessary) could get involved as the impact of an entire association of "experts" will carry considerably more weight than any individual. Monahan and Walker (1986) have suggested that the courts might even benefit from allowing written briefs to replace oral testimony in obtaining social science evidence. Jason and Rose (1984) described another way community psychologists can have a direct impact on law making: by simply sending relevant research results to legislators. The same thing could be done on either a large or small scale with judges and other court officials.

Just as not all evaluations have equal legal utility, it must also be stressed that the level of judicial authority advocated here for the testimony of social researchers should not be construed to carry over to professional (i.e., non-scientific) experts in the helping services. There are at least three important reasons for this caution. First, the training and experience of practicing psychiatrists, social workers, and the like does not typically equip them to speak for the general body of scientific data on a given issue. Second, it can be argued that, although researchers may have their own biases, the scientific method is geared toward exposing these in the search for objective, replicable findings. Much of the criticism of expert psychological testimony concentrates on judicial applications of clinical psychology and psychiatry—where the theories that are cited are occasionally obsolete and where the research, if it is relied upon at all, is admittedly problematic and often contradictory.⁷ The scientific legitimacy and juridical appropriateness of systems-level (i.e., program, policy, community) research methods,

⁷Jenkins (1983, p. 100) cited the most common criticisms of the expert witness system: (a) Attorneys often do not know how to locate competent experts, or make effective use of them. (b) Clients sometimes cannot afford to hire the right experts and thus must drop meritorious cases. (c) Experts are frequently torn over the ethical dilemma of loyalty to their clients versus loyalty to the truth. (d) "Battles of experts" seldom occur in criminal cases because the defense lacks the prosecution's resources. (e) Flimsy evidence from prosecution experts often is not rebutted. (f) Vested-interest funding of academic research may subtly bias the scientific literature that expert witnesses rely on.

however, should not be judged on the basis of the inconsistent testimony resulting from individual-level (e.g., McNaghten (Insanity defense), institutional commitment, and educational/employment) evaluations. Third, researchers may have less of a vested interest in whether their findings have a positive or negative impact on institutionalization, for example. Researchers — community psychologist, in particular — do have an interest in public sector institutions, such as education, social welfare, and the mental health and criminal justice systems, that have been targets of public interest litigation. But while the work of community psychologists is intimately tied to these institutions, their livelihood is often not directly tied to them. In these areas, community psychologists may present evidence of impact on the social environment just as research in the natural sciences has been used to demonstrate harm to the physical environment.

Health and social service professionals, on the other hand, have a somewhat more clear and direct stake in such judicial outcomes, regarding the gain not only of their own personal career but of their profession as a whole. Kiesler (1982) has noted that, because of this vested interest, mental health professionals have tended not to address this policy-change issue, despite clear evidence favoring noninstitutionalization. Thus, it may be up to community psychologists to do so.

SOCIAL SCIENCE TESTIMONY AND POLITICS

It is ironic, then, that the conservative bloc of the Supreme Court appears to rely more on the testimony of clinical professionals than on scientific authorities. Because the two types of experts tend to address different issues in different cases, they rarely square off in a courtroom. Their differential standing, however, can be seen in two different areas: family law and the death penalty. In the area of family law — where conservative justices are quick to invoke (at least rhetorically) traditional-sounding values, such as noninterference with parental authority — the Court has nevertheless tended to side with professionals' opinions, "irrespective of the parents' views" (Burt, 1983; see, for example, *Wyman v. James*, 1971; *Ingraham v. Wright*, 1977; *Planned Parenthood v. Danforth*, 1976). (One might suggest that *Yoder v. Wisconsin*, 1972, is evidence to the contrary, but in that opinion Chief Justice Burger was clearly deferring not only to religious freedom but to the testimony of an expert on Amish child-rearing practices.)

By contrast, on the question of the death penalty, the Court is no longer even willing to "weigh powerful evidence," based primarily on research into the variation in sentencing patterns, "that race or fortuitous circumstances

such as geography determine who is sentenced to death" (Meltzner, 1984, p. 275). Such evidence, in spite of its statistical authority, had never been terribly successful (see previous section and *Coker v. Georgia*, 1978; *Witherspoon v. Illinois*, 1968). Even so, the data and the related arguments were, until recently, at least allowed to be aired.

While less consistent and less liberal than its predecessor, the ruderless Burger/Rehnquist Court has been just as "activist" (as opposed to "restraintist") as the Warren Court (Blasi, 1983). Yet, it is clear from the preceding historical account that liberal jurists — from Brandeis to Marshall — have been the most inclined to cite research findings in their opinions (Kaplan, 1967; Nagel, 1965; Rosen, 1972). The reason for this is that liberal members of the Court "will be less hesitant than conservative members to render creative lawmaking decisions that cannot rationally be explained simply on the basis of established precedents" (Rosen, 1972, p. 211).

One conclusion to be drawn from the indication that the Court's conservative bloc has lost its patience with contrary social scientific testimony is that the judicial authority of the social sciences is unrelated to judicial activism. If the use of social science is related to any sort of juridical orientation, rather, it seems mainly to be linked to the same progressive values that have been associated with the development of community psychology, such as the empowerment of the disenfranchised and the appreciation and encouragement of cultural diversity (Rappaport, 1977). Thus, while recognition in dissenting opinions is not a total loss, it behooves expert witnesses in community psychology to concentrate their "informing" efforts on more moderate and liberal courts and legislatures, which are likely to be more amenable to citing social research, in general, and to community psychology, in particular.

Responsible community psychology involvement in public interest litigation would have the added benefit of helping to mute the effects of cyclical political swings, a purpose that has been advocated within the field (Heller & Monahan, 1977). Historically, social scientific theory and application have vacillated from one side to the other, according to the political tenor of the times (Levine & Levine, 1970). Because many judges are appointed for life and because the bar responds slowly to change, judicial opinion either lags behind or is only loosely related to political trends. The implication of these two points for community psychologists doing policy-relevant research is that, during a conservative shift in the political climate, the courts may still be looking for scientific evidence to bolster progressive decisions, as happened in 1954. If other social scientists have simply followed the conservative trend in funding priorities more than we have, it could give our findings unprecedented power and access. But only if we are ready.

CONCLUSIONS AND FUTURE ISSUES

The nature of much community research predisposes it for use in social cause litigation. C. Wright Mills (1968) argued persuasively that the work of the majority of social scientists is generally concerned with the problem of social change. Within psychology, this is probably most true of community psychologists, who are already more comfortable with advocacy roles and values such as collective empowerment and systems-level intervention. Other reasons for community psychology's special promise for providing public interest legal evidence include (a) its familiarity with evaluations and other research on public sector institutions and (b) its emphasis on external validity.

For a collaboration between community psychologists and public interest lawyers to work, we must develop mechanisms, such as regional expert witness clearinghouses, to coordinate the supply and demand for testimony. One small but easily manageable step in this direction would be the institution of a "public policy notebook" for the *Community Psychologist*, like the "judicial notebook" compiled by the Society for the Psychological Study of Social Issues for the *APA Monitor*. This would at least keep community psychologists abreast of pending legislation and cases currently being tried which bear on our work and would provide a contact group or individual for anyone wishing to appear as witness, work on a brief, or merely provide data.

The courts are still too often guided only by their own impressionistic notions of social phenomena rather than by whatever scientifically more valid and reliable data that might be available (Autenbach, 1968). Several responses to this situation deserve attention. One approach suggests that experts should choose their cases more carefully. Loftus and Monahan (1980) identified four general principles in deciding the appropriateness of expert testimony: "(a) the witness must be a qualified expert [generally, having an advanced degree and having conducted research and published—all in the specific area of interest]; (b) the testimony must concern a proper subject matter [i.e., be beyond the knowledge and experience of the average layperson and not invade the province of the jury]; (c) the testimony must be in accordance with a generally accepted explanatory theory [though this has not been applied to psychologists and medical experts]; and (d) the probative value of the testimony must outweigh its prejudicial effect [i.e., if it is important to the determination of guilt or innocence]" (p. 272, comments in brackets added).

A complementary approach would be to improve the structures for communication between the social science and legal communities. Rosen (1972) recommended the creation of a judicial research agency or a special liaison committee with the social science community. Such an institution might have

the added advantage of equalizing access to expert evidence, a weapon currently dominated by those who can afford it. (An important external factor in expert accessibility and cost, not to mention the objectivity of the scientific literature itself, is the level of funding for community research. As federal grants have dried up, the majority of experts who can afford to do research *and* testify are working for large corporations or the government.)

Furthermore, clear and systematic guidelines for adequately judging the meaning and underlying methods of expert testimony must be developed. For example, the establishment of standards and procedures by which to resolve contradictions and clarify ambiguities in social science testimony, a process already underway,⁸ should make it easier for community psychologists to succeed as expert witnesses. Monahan and Walker (1986) have gone so far as to argue to the legal community that social science, when used to create a "rule of law," be given the status of "social authority" (and be treated similar to legal precedent), as opposed to fact. One implication of this is that, aside from written briefs prepared by litigants and *amici*, the courts themselves will be responsible for investigating and evaluating the research findings relevant to a case at bar.

Thus, perhaps the most significant implication of the "communication structural change" approach is that lawyers and judges will have to better familiarize themselves with relevant and contemporary community and other social research findings and methods in order to understand and "challenge" testimony derived from it (or, alternatively, at least employ community psychologists as judicial consultants). (See, for example, *U.S. v. United Shoe Machine Corp.*, 1953, 1954; Beuscher, 1941; Freund, 1961, p. 153-154; Fahr & Ojemann, 1962; Katz, 1970.) Part of the blame for lawyers' ignorance of other relevant disciplines must rest with law schools. Stanford Law Professor Lawrence M. Friedman has decried the narrowness of traditional legal education, as if litigation "floats somewhere in a timeless, spaceless, cultureless world and legal doctrine is a tapestry woven in a hermetically sealed room" (cited in Margolick, 1983).

This state of affairs is particularly distressing for the training of legal advocates of social causes. Levin and Askin (1977) agreed. They concluded that "lawyers engaged in public policy litigation ought to develop closer col-

⁸Consider, for example, Freund's (1961) suggestion that where empirical data are used in fact finding, they "ought to be placed in the record and not left simply for the brief. If the data are presented for the record, there will be an opportunity . . . in the trial court to impeach or controvert the expert opinion that is relied on" (p. 153). Others (see Scriven, 1970) have even put forth compelling arguments for a systematic methodological union between law and social science.

laboration with social scientists. And to put first things first, it goes without saying that the movement to include social scientists on law school faculties ought to be supported and accelerated" (p. 152).

Cottrell's (1966) assessment—that there has not been "any general systematic exploitation of social science resources by the legal profession in theory, research, teaching or practice" (p. 108)—is, unfortunately, still all too valid. And the ignorance is mutual. Graduate programs combining law and disciplines such as clinical psychology have been developed (Roersch, Grisso, & Poythress, 1986), as have private bureaus for expert witnesses. But little of this or any other sort of systematic organization has occurred in the realm of research related to civil liberties/public interest law. Although community psychologists are perhaps more attuned to the real world than most social scientists, we must continue to unmask our own "dishonest" academic pretensions (Katz, 1970) and better familiarize ourselves with and avail ourselves to areas of law that are relevant to our work (see Greenberg, 1977; Monahan & Walker, 1985).

Landis (1938) made the optimistic appraisal that the influence of science and knowledge on law "lifts the 'supremacy of law' to new heights where the great judge, like a conductor of a many-tongued symphony, from what would otherwise be discord, makes known through the voice of many instruments the vision that has been given him of man's destiny upon this earth" (p. 155). It is a shame that, almost 50 years later, the conductor and half of the orchestra are still only trained in the classical form and the other half remain strictly jazz musicians. The result is less than sublime.

Despite this mutual lack of understanding, we must realize that our data (or some other researcher's perhaps weaker data) will be used by policy makers. Thus, there is a strong argument in favor of engaging in expert testimony simply in order to avoid the misinterpretation or misuse of one's data. Yet, despite this concern for scientific integrity, when the researcher moves from the realm of science to the realm of public interest law, he or she becomes an advocate for a particular position, almost as a practical necessity. As community psychologists, it is up to each of us to decide whether we believe strongly enough in our research and in our values to put them on the witness stand. The cross-examination can only be healthy for both community psychology and the law.

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