Hans Zeisel: The Time of His Life
Bruce Mays*

Editor's Note: Hans Zeisel was Professor of Law and Sociology at the Law School from 1953–1974; since 1974, he has been Professor Emeritus. In honor of his 75th birthday on December 1, 1980, the Law School is pleased to reprint the following article, originally published in the Student Lawyer.

On a warm August night two years ago, Richard Duggar was cruising his van down Highway 33 near Elkhart, Indiana, when he dropped a cigarette on to the floor. He may have been doing 50 miles an hour, maybe 55; no one is sure. The car in front of him may have stopped, or it may have been dawdling along; no one who lived through the accident really knows. What everyone does know is that while Duggar leaned down to fish around on the floor for his cigarette, he took his eyes off the road just one moment too long. By the time he sat back up, it was too late. His car crashed into the car ahead of him and three local girls in the 1972 Pinto in front of him died.

When a grand jury convened, it found Duggar innocent of any criminal responsibility for the accident. But the grand jury felt the Ford Motor Company was guilty of negligent homicide for building and marketing an automobile prone to gasoline leakage in rear-end collisions. It was the first time an American corporation had ever been brought up on criminal charges and Ford officials, naturally enough, were worried. They wanted the trial moved out of Elkhart to what they considered a safer venue. It was the first time an American corporation had ever been brought up on criminal charges and Ford officials, naturally enough, were worried. They wanted the trial moved out of Elkhart to what they considered a safer venue. The move was crucial; any testimony they could present to help build their case had to be called. So at the end of 1979, Hans Zeisel, Professor Emeritus in Law and Sociology from the University of Chicago, was on a witness stand in Elkhart testifying for the defense.

"The accident with the Pinto took place in Elkhart and it was there that Ford was indicted," Zeisel explains. "They had a public opinion poll taken which showed enormous public prejudice against them. In Indiana, you cannot waive a jury trial unless the prosecuting attorney consents. The prosecuting attorney would not consent. So, there was going to be a jury trial in a county that was up in arms because three nice girls had been killed in a horrible accident. Ford came to me—well, how should I say?" He smiles, shrugs, shakes his head; smiles again, figures what-the-hell, and says, "They came to me because I was the most eminent person in my field."

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No one who knows Hans Zeisel would have even hesitated before delivering that explanation. At 75, the lawyer turned most-eminent-person-in-his-field has hit his stride, his prime. A slightly smaller, somewhat whiter-haired Jacob Bronowski, Zeisel knows more about juries and jurors than anyone else today. His recent bibliography is eight pages long: six published books, 52 papers, 31 articles, and 17 reviews. Say It With Figures, a treatise on research methodology which he wrote in 1947, is currently in its fifth edition, having been published in seven different languages. Written in collaboration with the late Harry Kalven, Jr., The American Jury has become the definitive text on the human motivations and mechanisms of jury deliberations. Along with articles on statistics and sociology, his bibliography includes essays on the efficacy of the death penalty and radio broadcasting, a review of The Kinsey Report, and scholarly treatise on Romeo and Juliet.

In Elkhart, Ford sensed that local animosity could easily translate into precedent-setting verdicts and cash compensation to the victims’ families and brought Zeisel in to testify as an expert in public opinion. Zeisel studied Ford’s polls and talked to people in Elkhart. He testified that feelings in Elkhart were indeed running high against Ford. But even more to the point, feelings were running high partly from all the pretrial publicity—publicity originating, to a large extent, from the office of the public prosecutor. In his capacity as an expert in public opinion, Zeisel was able to diagram for the court the progression of public opinion, a progression that correlated neatly with television appearances by the public prosecutor, the publication of press releases by his office, or television appearances by grand jury witnesses. Zeisel didn’t draw any conclusions or make any recommendations. He didn’t have to. The picture he painted was strong and solid. For his part, the prosecutor tried to show that Zeisel’s $1,000-a-day fee had tainted the witness’s testimony. (“An old and shabby trick,” Zeisel says, waving his hand with disdain. “An old shyster trick.”) In the end, the court was convinced by Zeisel. The atmosphere in Elkhart was found to be unconducive to a fair trial, and the case was moved 75 miles south to, Winamac.

“It is not unusual at all to apply the methods of statistical analysis to a courtroom situation,” Zeisel explains. Zeisel, a native of Czechoslovakia, still speaks with an Eastern European accent and rhythms; typically, his sentences end with the rising intonation that suggests a question, as in an example he gives of his statistical approach: “You are a writer, yes? All right, then, I tell you something. There was a case in Europe, oh, I don’t know when, in which a man parked his car next to the curb in an area that was posted for one-hour parking. A policeman came by and marked the two outside tires with chalk, next to the pavement, like so—whatever. When the policeman came back, what, a few hours later? The chalk marks were in the same position, next to the pavement. So he gave the driver a ticket. But in court, the driver told the judge he had moved the car before the hour was up, but had come back to exactly the same spot. And the court agreed that this was possible—that odds of one hundred forty-four to one—there are only twelve positions to mark on each tire, so twelve times twelve, yes?—were not high enough to rule out the possibility.” Zeisel smiles, the old professor finishing his lesson. “You see? In fact, if one assumes that both tires rotate at the same rate—you know, they are the same size, what have you—then the odds are probably only twelve to one. But the court found that the odds of one hundred forty-four to one were not sufficient to convict, and the man was let go.”

In 1938, Zeisel, ten years out of law school with degrees in law and economics, was living in Vienna with his wife. It was not a hospitable time for Jews in Austria: to the south lay Italy, Fascist since 1922; to the east was Hungary, Fascist since 1919; and to the north and west over Austria’s right shoulder, sat Germany, the largest Fascist power in the world since 1933. This is how Zeisel describes it:

“The problem was not leaving Europe. Hitler wanted you to leave, if you were a Jew. As long as you left everything behind, the Nazis were only too glad to see you go. But one has to have someplace to go. In Vienna in 1938 the New York phone book was worth its weight in gold,” he explains, holding an imaginary phone book in his hands, weighing it silently. “People would go through the directory. If your name was Wolf you would write to every Wolf in the directory, asking them to sign an affidavit of sponsorship—if something happened and you couldn’t support yourself, whoever signed the affidavit had to agree to support you, it was that kind of thing. People were begging, ‘Mr. Wolf, please, save my life.’ ” In March of 1938 the Nazis marched into Vienna. Zeisel’s wife had a cousin in Iowa and left the next day for America; Zeisel followed three months later. “My wife and I lost thirty-eight relatives between us. Just my wife and I—thirty-eight.” He stops, leans forward—who could understand such a thing? He says simply, “We ran for our lives.”

In 1961, when Adolf Eichmann was on trial in Israel, Zeisel argued against the trial and, especially,
against the execution. “I find myself attracted to the wisdom of the grim joke the Vienna Jews told each other during the Hitler days,” Zeisel wrote in an issue of Saturday Review. “If I ever could get my hands on Hitler I don’t know what I would do to him,” says one man. ‘I know what I would do,’ says another. ‘When it is all over, Hitler will sit at the table next to mine in the coffeehouse while I read the newspapers. He will then ask me, “May I please borrow your newspapers?” And I shall look straight at him and say, “No, not you, Herr Hitler!” ’ It has always seemed to me that such punishment would do just as well. After all, it was Cain’s.”

Arriving in this country, Zeisel, 33 years old and too poor to earn a new law degree, turned his economics degree to good advantage and worked as a market researcher in New York. Then in 1953, the University of Chicago received a grant from the Ford Foundation to begin a new program, a hybrid of law and sociology. Edward Levi, Dean of the Law School, needed a lawyer who also had experience as a sociologist. No American lawyers fit the description. Hans Zeisel did. One phone call later, Zeisel and his wife were on their way to Chicago. They have been there ever since.

Zeisel’s wife, Eva, a noted industrial designer, is now doing research on an 18th-century episode in the history of New York City. Their daughter, Jean, is an actress, and their son, John, is a sociologist of architecture.

“My life now has three parts,” Zeisel says. “One-third of my life now is devoted to researching and writing scientific works. I am working on The Limits of Law Enforcement, a study of how felonies in New York City are disposed of. What we have found is that it is a terrible mistake to think that law enforcement can solve the problem of crime. Yes, there would be more crime right now without law enforcement, but to think you can ever control crime is a terrible mistake to think that law enforcement can solve the problem of crime. Yes, there would be more crime right now without law enforcement, but to think you can ever control crime is a terrible mistake to think that law enforcement can solve the problem of crime.”

“In New York today, one-half of all serious crimes are committed by teenagers. One-half! We found that the crime rate among blacks is twice that of Hispanics, and among Hispanics twice that of whites. Now, you ask yourself why is this? The answer comes from an interesting statistic. Take a Harlem school, which you would have to say is what, the heart of the ghetto? In this school the truancy rate is forty-five percent—after you remove the permanent dropouts, the children who have never enrolled, all right? Forty-five percent. What is happening to these students? Well, it is fairly obvious they are not going to the Metropolitan Museum during the day.”

“What I am saying is that you have to make the schools more attractive to the students. No matter how difficult or costly, one has to take care of these children. Children! These are really children! You have to begin in nursery school; you have to create a place that is so attractive that it becomes the best part of that child’s life. Let’s say that Johnny is out with his friends, and there is a car on the street. One of his friends wants Johnny to help him steal something from the car—whatever. You must somehow make Johnny the kind of person who will say, ‘No, I don’t do those things.’

“This is a remarkable country—my God, it had people walking on the moon! Do you think it could solve this problem if it wanted to? Come on, now, if someone gave you unlimited money and unlimited talent, don’t you think you could design a school that would be attractive to children? When I see three-year-old children, I don’t see criminals, I see innocent children. Something happens to them in their lives after they’re three to make them become criminals. What if you convinced a player from the Pittsburgh Steelers to be a principal at each black school in Chicago? Don’t you think these children would want to attend school, to be at the place their heroes were? I’m just speculating, I’m not offering this as a real solution, but you have to do something, you have to start in the nursery schools and make the schools the one shining place in a child’s life. So that instead of leaving school in the middle of the day you have children rushing to get there five minutes early. You have to have teachers the children will fall in love with, the way I fell in love with mine. Because, what can I say? I believe that if you treat children right, you produce good people.”

Fifteen years ago, when Zeisel was writing The American Jury with Harry Kalven, the two lawyers gathered data from 3,800 jury trials. In each case they knew in advance what the verdict had been. In each case, they talked to the jurors; and in each case, they asked the presiding judge how he or she would have voted. No one had ever done that before. The book is now considered the standard reference for lawyers selecting juries in a criminal trial, and Zeisel, not surprisingly, is considered the leading authority in the field. So secure is his reputation that after his testimony had helped move the Pinto case from Elkhart to Winamac, Ford hired Zeisel to help their lawyers select the jury for the trial. Every trial lawyer knows that a case can turn on this one key aspect. The Ford case is guaranteed to set precedent, starting reverberations that will rattle through the legal and corporate systems in this country for generations. Each juror was a link in the
decision. In their study of juries, Zeisel and Kalven found that the jury and the presiding judge disagreed on the question of guilt in one case out of five. The reasons appear to have more to do with basic human psychology than with law. It was for his understanding in this mysterious gray zone that Ford hired Zeisel to sit in a back row of a courthouse in Winamac this past winter watching, weighing, thinking, and mind reading.

“Another third of my life is for people who are fighting the death penalty,” Zeisel explains. In a 1976 Supreme Court Review article, “The Deterrent Effect of the Death Penalty,” Zeisel plotted on a graph the incidence of homicides in states that have abolished or never instituted the death penalty. He then gathered similar statistics from states that have an active death penalty in the same ten-year period, and compared the two graphs.

In states without the death penalty, the incidence of capital crime rose steeply during the studied years. In the states with the death penalty, the incidence of capital crime rose just as steeply. Side by side the two graphs are indistinguishable. “It is impossible for anyone to look at these graphs and argue that the death penalty has a deterrent effect,” he argues. “Look at them, there is no significant difference one way or the other. You can argue for the death penalty for revenge, or because you want to see someone permanently removed from society; this is possible, but you cannot argue that the death penalty has any effect on crime. This is simply not true.”

In 1953, Zeisel went through the courts in Chicago and Brooklyn, interviewing jurors who had served in cases where the first ballot had been split. “In two-thirds of all cases, the first ballot is split,” he explains. “Did you know that?”

“When you ask these people if they are in favor of the death penalty, you find an interesting thing. If they answer yes, they are in favor of the death penalty, and then you ask them how they voted in the trial, you find that in almost every case the ones who are in favor of the death penalty are inclined to find the defendant guilty. It is a very close correlation. I don’t mean, are they in favor of the death penalty in every case, or are there special circumstances for which they would accept the death penalty. If they are in favor of the death penalty, simply asked that way, in a general sense, then they are more inclined to look at the evidence in any criminal case and find the defendant guilty.” He shrugs, “I don’t know why this is. White men are most in favor of the death penalty, then white women, then black men, and finally black women. I don’t know why this is—there are people who are more punitive than others; these people tend to favor the death penalty.”

The last third of his life, the part that is not absorbed by matters of sociology and jurisprudence, includes his Shakespeare studies, his teaching, the life he and his wife have built at the University of Chicago. Like Faust, Hans Zeisel wants to know everything. In his 75 years, he has gotten a pretty good start on it. His immense curiosity about the way people think and act was evident in his early observations of the ways of the business world.

“In 1934, when I was twenty-nine years old, I wanted to go to America. But I couldn’t; no one had any money then, so I went to Czechoslovakia instead, to the Bata Shoe Company because it was the closest thing to America I could find. They did everything there like an American company; they produced something like thirty-five thousand pairs of shoes a day. It was the most amazing thing in the world. They could produce a pair of children’s sneakers for, I don’t know, fifty cents, something truly remarkable. But their shoes were not selling in Prague, and no one knew why. So they came to me, a Mr. Lata, and Mr. Lata asked me to study this matter and make a report to him.

“So I went to Prague and found that the reason was that the women in Prague had a little more money than other people and didn’t want to buy the same shoes that everyone else bought. I came back to Mr. Lata with my report. I had three copies, and my report said that Bata shoes should open a branch on Prague’s “Michigan Avenue,” and sell their shoes there. But they would advertise them as the special export line of shoes, the same line that is sold in Paris, and London—and then charge twice as much for the shoes. So, I handed my report to Mr. Lata,” he recounts, holding out an imaginary report.

“The next day Mr. Lata told me, ‘Yes, this is a very excellent report, but I’d like to show it to Mr. Chiepwa. Could you have another copy of the report for Mr. Chiepwa? So I said yes and handed over another copy.

“Two days later, Mr. Lata came to me. He was very impressed, Mr. Chiepwa was very impressed, but now he would like to give a copy to the big man, Mr. Bata himself, to read. And I said, ‘Well, I don’t know. I only have one more copy.’ And Mr. Lata said, ‘Oh, that’s too bad; Mr. Bata is leaving for America tonight, he’s flying over and likes to read things on the plane, we wanted to give him your report to read.’ And I said, ‘All right, here, yes; I’d like Mr. Bata to read the report,’ and handed the third and final copy across.
“Six weeks later—six weeks because that was the kind of company they were, they did things very fast—a branch of Bata Shoes opened on "Michigan Avenue," advertising their special export line, the same line one saw in Paris or London. They charged twice as much for the shoes, and they sold a tremendous number of shoes, exactly as I had predicted they would. But then, you see, I had no more copies of my report, they had taken them all. I never heard from the Bata Shoe Company again.”

He smiles, shakes his head, shrugs. “That was my first introduction to the corporate world.”