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be implied from the total presentation that the view is that the learning and teaching of social science research methods outranks all other educational needs on all occasions.

As a helpful preliminary, the first paper enumerates the presently relevant social science research methods, distinguishing, wherever possible, the familiarity required to lead an investigation using such methods, for example, from that necessary merely to participate in their design or to evaluate completed investigations.

## OF SOCIAL SCIENCE RESEARCH METHODS AND COMPETENCY FOR LAWYERS THEREIN

HANS ZEISEL \*

The law's flirtation with the social sciences is of long standing. Now possibilities of a more serious liaison within the university are under consideration. This is one consequence of the additional areas in which social-science-type studies have become part of the law itself.

Empirical investigations of economic problems, prices, marketing practices, and shares of markets have acquired growing importance in economic litigation and, especially, in transactions before administrative agencies. Statistical evidence, especially in the form of sample surveys, long has had standing before administrative agencies, and has recently found increasing acceptance in the courts. Lastly, the legal process itself has come under social science scrutiny: the problems of court congestion, of the functioning of the jury, of the effectiveness of pre-trial in civil cases, of preventive detention, of the deterrent effect of capital punishment, of pre-trial release on one's own recognisance, are all examples of this trend.

The tradition of social science research is, of course, especially strong in the realm of criminal law: criminology has had for a long time a social science orientation and, in recent years, has begun to sharpen both its tools and its focus.

Finally, it has become fashionable, in litigation, in judicial administration, and also in decisions as to legislation, to look more carefully, and more often, at social science data.

The law schools, accordingly, have begun more seriously to share this growing interest in the social science research of legal problems. Aided, at first, by foundations, a variety of arrangements for social science oriented legal studies have sprung up, and now the question is before us as to whether social science research should become part of the law school curriculum, and, if so, in what form should it be taught.

From a pragmatic viewpoint there is little need to justify such a proposition. New law careers are opening up in the administration of law, in research posts at a variety of institutions, academic and public, concerned with the operation of legal institutions; the practicing lawyer increasingly relies on social science evidence, which he needs to understand in its basic structure at least, so that he can obtain and later argue validity and admissibility

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of such evidence. If the lawyer later becomes a judge, the California Supreme Court's decision in *People v. Collins*,<sup>1</sup> with its elaborate statistical appendix, suggests that knowledge of the elements of social science research is not wasted in a career on the bench.

It is perhaps useful to begin with the major objection often raised to such an expansion of the curriculum. It is contended that law is law and social science is something else, and although the two often meet, there is as little need for teaching social science in the law school as there is need for teaching, for instance, medicine, which too has major links with the law.

The argument might have some merit, if the intention were aimed at teaching substantive social science: that is, the body of sociology, or parts of it, that would correspond to the body of medicine, or anthropology, or what not. The argument loses its power, however, if the intention is not to teach substantive social science, but to teach the basic methods of social science research as they apply to the law.

There is a simple reason why knowledge of the research tools is more important for a law student than knowing whatever substantive findings the social sciences can claim. With one exception, the social sciences have investigated but a few problems of society, the map is still largely empty. The problems the lawyer is likely to be interested in are likely to be new problems, never before investigated.

The exception is economics, the one social science with a well developed theoretical structure, where one is unlikely to find many lacunae, where any new investigation is likely to be closely linked to a main body of theory.

What, then, is it precisely that a law student, if he cares to avail himself of the opportunity, may learn? He should be able to learn how social science research is conducted, that is, how one goes about using the set of modern tools if one seeks the solution of a social science problem.

What does this modern social science set of research tools consist of which should be taught to the law student, so that he understands, at least, their main functions?

First, he should learn where and how to obtain the data that form the raw material of any investigation: through observation of ongoing events, through surveys that record past events, through experiments of various sorts, or often merely through recourse to existing data, collected for other purposes in the course of reliable routines. A major role in this data collection process is played by questionnaire design and by personal interviewing techniques that have only recently emerged from the realm of learning through experience into a stage where to some extent they can be taught, at least in their fundamental structure.

Then there is the realm of descriptive statistics so essential to the perception and communication of quantitative relationships: percentage figures, ratios, and more complicated index figures, which have begun to transcend the field of economics, in which they were originally developed.

<sup>1</sup> 68 Cal.2d 319, 335, 438 P.2d 33, 42, 66 Cal.Rptr. 497, 506 (1968) (probability theory selected by prosecution to bolster identification of defendant prejudicial error). For a suggestion that the theory was misapplied for reasons other than those upon which the opinion depends and the presentation of another theory advanced by the authors as helpful to a jury and non-prejudicial, see Finkelstein and Fairley, *A Bayesian Approach to Identification Evidence*, 83 Harv.L.Rev. 489 (1970).