

## Expert Witnessing

**Social Science in Court.** Mobilizing Experts in the School Desegregation Cases. MARK A. CHESLER, JOSEPH SANDERS, and DEBRA S. KALMUS. University of Wisconsin Press, Madison, 1989. xiv, 286 pp. \$45; paper, \$17.50.

During the 1980s, social scientists have become regular participants in the litigation process, testifying about a range of diverse topics such as eyewitness identification, economic harm, and job discrimination. Most analysts trace the origins of such courtroom testimony to the appearance of social scientists as experts in the controversial school desegregation cases. *Social Science in Court* examines the experiences of the social science experts who testified about desegregation in these highly contentious trials. By providing a detailed and compelling portrait of the early central role of social science experts in one of the most significant social movements of the century, the book is of considerable historical interest. It also teaches us some important contemporary lessons about the conflicts between scientific findings and personal values that may arise when scientists take the stand.

The authors set the stage in the first part of *Social Science in Court* by chronicling legal developments in the desegregation movement, with particular focus on the involvement of social scientists. They recount how social movement organizations and attorneys drafted social scientists into the legal battle for desegregation. Social science research about the impact of educational and residential segregation proved to be particularly useful in pushing school litigation from a private law model, with a focus on individual actions and evidence of intentional discrimination, toward a public law model, with greater emphasis on institutional discrimination and societal reforms.

The heart of the book reports the authors' own research findings from interviews with social scientists and legal actors involved in desegregation litigation. The researchers contacted and interviewed 67 experts, 69 lawyers, and 10 judges who had participated in a sample of 17 school desegregation cases active during or after 1970. The authors supplemented the interviews, conducted primarily in 1978–1979, with several thousand pages of courtroom testimony and other records. The book is well written and skillfully edited. To illustrate key points, the

authors draw effectively on quotations from interviews with social scientists and lawyers. One caveat is in order: Don't skip the footnotes, which contain much important and interesting information.

The researchers discovered that attorneys on both sides in the school desegregation cases spent substantial time and effort recruiting and preparing expert witnesses. Lawyers' activities included educating social scientists about the adversarial nature of the legal process and distinguishing it from the scientific process. Negotiation between the expert and the attorney typically occurred, with the mutual goal of developing highly credible expert testimony that was justified by social science research findings and that supported key legal arguments. Attorneys used role-playing, observation of other experts, and reviews of courtroom transcripts to prepare the scientists for adversary battle. In an engrossing chapter on cross-examination strategies, the authors make advantageous use of excerpts from court documents to demonstrate how attorneys attacked the flaws and limits of social science expert evidence.

The adversary ethic of the courtroom differs from the traditionally less partisan search for truth in scientific endeavor, although of course science too has intensely adversarial moments. In one of its major contributions, *Social Science in Court* describes how social scientists dealt with conflicts stemming from the different norms and expectations of the courtroom and the scientific laboratory. One method social scientists used was to adopt in advance a particular normative stance. Some experts chose a legal-adversary stance, in which they volunteered only research evidence that supported their side, deemphasized or did not mention the flaws in the data, or refrained from discussing opposing evidence. In the words of one expert,

I understood the partisan nature of the courtroom and I realized that I would be on the stand arguing for a position without also presenting evidence that might be contrary to my . . . side. But you see, that didn't bother me, because I knew that the other side was also doing that [p. 127].

Other experts embraced a social science normative stance, in which they qualified statements made on the witness stand and discussed evidence against their side:

Adherence to professional standards is the only thing that justifies you being in court. . . . I stayed within the boundaries of a social scientific presentation in the sense that I didn't say what I said for my client's sake [p. 114].

Those experts who fashioned their testimony according to a social science normative stance reported experiencing the most role conflict.

Strong differences existed among experts in their views of the responsibility of social scientists to participate in litigation and the application of their research findings. Some viewed social scientists as having a special responsibility for helping to implement social changes, whereas others saw advocacy and active involvement as compromising scientific objectivity. Thus some plaintiff experts who strongly supported equal educational opportunity would have been reluctant to testify for the defendants because their testimony would impede a cause in which they believed. Other experts claimed that their personal beliefs about the merits of the case were irrelevant to their decision to testify.

Scholars who testified against desegregation faced additional hurdles. According to the book, the majority of social scientists during the 1950s and 1960s held liberal social and political values and were supportive of the plaintiffs' desegregation efforts. Indeed, in the early days of litigation, defendants arguing against desegregation had difficulty finding social scientists who would testify for their unpopular side. As public opinion shifted and additional research revealed grounds for qualifications about the effects of desegregation, more social scientists were willing to join forces with the defendants. Those scientists who testified against desegregation reported experiencing adverse career consequences, yet justified their involvement on the grounds that their professional obligation was to disseminate data neutrally to policymakers.

Whether a scientist adopts a legal-adversary or a social scientific stance, the morally problematic features of providing expert testimony do not disappear. The ethical tension between the scientific tradition of full disclosure and the more limited role of the adversary expert appears inevitable. On the other hand, the claim that one's role is only as a conduit for the neutral transmission of data ignores the expert's personal responsibility for advancing a particular side in a social conflict. By describing the different ways in which scientist experts manage role conflict and justify their own participation, *Social Science in Court* sharply delineates the ethical problem, if not the solution.

As the use of scientific experts continues to increase, alternatives to experts represent-

ing parties to litigation may grow increasingly attractive. One frequently suggested option is a panel of experts, who meet and reach conclusions about the research outside the adversary environment of the courtroom. Chesler, Sanders, and Kalmuss discovered that their respondents had mixed reactions to the expert panel alternative. Interestingly, lawyers were opposed to expert panels for hearings on whether civil rights laws had been violated, but were more willing to support them for hearings about remedies for legal violations. At the remedy stage, expert panels may be ideally suited to construct a compromise plan that is satisfactory to all the major players who, following adversary litigation, must develop new ways to work together. This dichotomy in the perceived usefulness of expert panels suggests the circumstances in which they may be most valuable and deserves greater attention.

The book raises important questions about the phenomenon of expert witnessing within the context of a controversial social movement. Do comparable attorney recruitment and preparation strategies, and similar tensions between scientific norms and adversary roles, characterize the experiences of

scientific experts appearing in less politicized cases? The generalizability of the experiences of the desegregation experts must be tested by future researchers, but the meticulous and insightful exploration of the phenomenon in *Social Science in Court* provides an excellent foundation.

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## Insect Sociobiology

**The Genetics of Social Evolution.** MICHAEL D. BREED and ROBERT E. PAGE, JR., Eds. Westview, Boulder, CO, 1989. viii, 213 pp., illus. Paper, \$36.50. Westview Studies in Insect Biology. Based on a conference, Dec. 1987.

Time was that worker honeybees were thought of as interchangeable little automata, identical within a colony except for a change with age of the set of tasks responded to. No more. Time was that social insect colonies were regarded as "superorganisms,"

analogous to the bodies of single animals in the devotion of their constituent members to the common good. No more. Both views have fallen decisively under the weight of both empirical and theoretical studies. As the number of bee and ant pictures on the recent covers of international journals attests, the evolutionary study of social insects is coming to grips more and more with the unraveling of the predictions of hypotheses now decades old and the pleasant discovery of unanticipated phenomena such as genetical bases for behavioral specialization in honeybees.

This book, accordingly, based loosely on a symposium but molded into a unitary form, is about the interaction of genetics and evolution with sociality. The focus is narrower than the title: it is restricted not only to eusocial insects (those with a reproductive division of labor) but to the Hymenoptera (bees, ants, and wasps). Nevertheless, this group is in many ways the core group for sociobiological studies, and the focus actually achieved makes for an effective and exciting book.

After an introduction by Breed to the concepts and questions of the field, the book turns quickly to the recent finding that

## Brain Structure, Learning, and Memory

Edited by Joel L. Davis and Robert W. Newburgh, *Office of Naval Research*, and Edward J. Wegman, *George Mason University*

This new book, based on a AAAS Annual Meeting symposium, explores the connections between cellular and computational approaches to understanding the neural basis of learning and memory. Incorporating such diverse ideas as invertebrate and computer-based models, cerebellar involvement in motor engrams, learning, and the sensory sciences; nonstationary point processes; and models closely tied to vertebrate neural nets, the contributors not only shed new light on important brain functions but also provide an example of how neuroscience research should be structured.

\$35.00; AAAS members \$28.00 (include membership number from *Science*). 301 pp., 1988. AAAS Selected Symposium 105.

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