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SCIENCE AND THE LAW

AAAS Project Links Judges to Scientific Experts

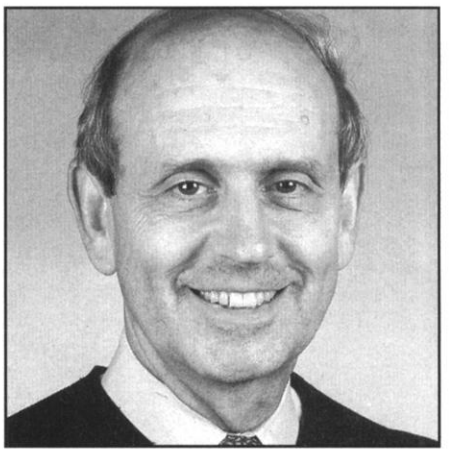
In his address to the AAAS Annual Meeting in 1998, Associate Justice Stephen Breyer of the U.S. Supreme Court noted that the law "increasingly needs access to sound science."

"The need arises," Breyer said, "because as society becomes more dependent for its well-being upon scientifically complex technology, we find that this technology increasingly underlies legal issues of importance to all of us."

This notion is at the heart of a new, multi-year project that the AAAS launched in February to help federal judges find well-respected engineers and scientists to serve as expert witnesses. Known as CASE, for Court Appointed Scientific Experts, the project was developed under the aegis of the National Conference of Lawyers and Scientists (NCLS), a committee of AAAS and the American Bar Association's Science and Technology Law Section.

Judges have had the formal authority to appoint their own experts since 1975. And, since 1993, a U.S. Supreme Court ruling has required the federal judiciary to take steps to exclude unreliable testimony from the courtroom. The CASE project is an effort to alleviate the burden placed on the judiciary and to address the increasing level of complexity in cases. In his speech in 1998, Breyer noted that a case involving patent law "can turn almost entirely upon an understanding of the underlying technical or scientific matter." He cited cases in which the courts might be asked to review the conclusions of government agencies "about the safety of a drug, the risks attending nuclear waste disposal, the leakage potential of a toxic waste dump, or the risks to wildlife associated with the building of a dam."

Deborah Runkle, project manager for CASE, which falls under the purview of the AAAS Directorate for Science and Policy Programs, notes that a 1993 survey found that almost 90 percent of the judges questioned would consider appointing an expert to help them comprehend complex technical issues. Nonetheless, they rarely use their authority to do so, Runkle said.



Stephen Breyer, Associate Justice of the U.S. Supreme Court

"The judges don't use this authority to appoint experts, and one reason they don't is that they don't know where to go for the expertise," Runkle said. "We think they will feel comfortable coming to us because they can say they are going to an organization with tremendous prestige and no vested interest in the outcome of a given case."

The experts, who are paid by the courts, are located in various ways, Runkle said. A number of AAAS's affiliated organizations are assisting with the project, so one avenue might be to ask the American Statistical Association or the Society of Toxicology to make a suggestion. CASE works also with a "blue ribbon" group of advisors, who will make discreet inquiries about an expert's scientific credentials as well as his or her ability to communicate to a lay audience. The project also has access to a number of databases that can serve to develop an initial list of possible experts.

If there has been any opposition to having judges appoint their own experts, it has come from attorneys who argue that the those experts will have the "imprimatur of truth," said U.S. District Judge Martin L.C. Feldman of New Orleans, who participated in the design of the CASE project and is on the project's advisory committee. "The court can let the jury know that just because the judge has an expert does not mean [that expert] is right."

SCIENCE AND POLICY

Record R&D Funding Reported in AAAS Report

A AAAS report that was released in February estimates that the federal government has allocated a record $90 billion in FY 2001 for research and development programs.

The report, entitled "Congressional Action on Research & Development in the FY 2001 Budget" (www.aaas.org/spp/dspp/rd/ca01main.htm), found that Congress increased funding for non-defense R&D by more than 11 percent, to $45.3 billion. R&D funding for defense increased by 7 percent, to $45.5 billion, the report's authors said, "bringing defense and non-defense R&D near parity for the first time in 20 years." To gather this information, the report's authors analyzed 13 appropriations bills, as well as the budgets of two dozen federal agencies.

AAAS began publishing budget numbers for R&D in 1976, according to Al Teich, head of AAAS's Directorate for Science and Policy Programs (www.aaas.org/spp), which publishes the report and two other accompanying documents. One of them is an analysis of the R&D components in the President's budget request to Congress. The other document is produced after the Directorate for Science and Policy's yearly colloquium on science and technology policy (www.aaas.org/spp/colloqu). It includes the speeches given at the colloquium, as well as recent papers that address relevant policy issues. The latest edition of this publication, the Science and Technology Policy Yearbook 2001, was published on February 16 and is available at the following URL: www.aaas.org/spp/yearbook.