



1959

The Law, Social Science and Academic Freedom - A Psychologist's View

Frank C. J. McGurk

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>



Part of the [Law and Society Commons](#)

Recommended Citation

Frank C. McGurk, *The Law, Social Science and Academic Freedom - A Psychologist's View*, 5 Vill. L. Rev. 247 (1959).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol5/iss2/7>

This Symposia is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

THE LAW, SOCIAL SCIENCE AND ACADEMIC FREEDOM — A PSYCHOLOGIST'S VIEW

FRANK C. J. MCGURK†

WHAT CONSTITUTES SOCIAL SCIENCE, or a social scientist, is difficult to describe. The term "social" implies interest in the relationships among living creatures and their physical environment, and the term "science" or "scientist" denotes that the generally-known rules of objective investigation are followed. In terms of the above, a social scientist may be defined as one who by the rigorous statistical testing of hypotheses, comes to know the social relationships among men in their reactions to their physical and social environments.

In actuality, however, the above definition is not satisfactory. Too often, witnesses testify with no better knowledge of a problem than a few graduate courses, or simply an interest, in the general topic of which the specific problem is a small part. Witnesses with reputations for knowledge have testified about problems in which they have never done any scientific investigation. Other witnesses with similar reputations have given long and authoritative testimony about problems for which there is no scientific evidence. All these have been called social scientists, and our definition (for this paper) should include them. Therefore, for this discussion only, a social scientist is defined as anyone who so calls himself, regardless of his training or basic discipline, and who is accepted as such by the investigative body before whom he makes such a claim.

One further expression needs description. By "guiding legal processes", I mean the giving of testimony before any investigative body which is not only empowered to take such testimony, but which is also able to influence (directly or indirectly) law-making bodies.

I.

ROLES FOR SOCIAL SCIENTISTS.

The roles that may be played by social scientists in guiding the legal processes are affected by three factors: (a) by the character

† Associate Professor of Psychology, Villanova University. B.S. 1933, University of Pennsylvania; M.A. 1937, Ph.D. 1951, Catholic University of America.

of the witness' testimony; (b) by the attitude of the investigative body before whom the witness wishes to appear, or before which he has been summoned; and (c) by the social forces of hesitancy and censorship.

The Character of the Witness' Testimony.

Roughly, the testimony of witnesses may be divided into two types, the testimony of the scientist, and the testimony of the artist. The testimony of the scientist presents empirically verifiable data, and may express a mathematical statement of the probability of the occurrence of an event. The scientist is interested in what exists, and from this he may make a prediction of what could be expected when certain conditions prevail. Thus, a scientist might state that the percent of pupils who exceed a given psychological test score is greater in a specific large, well-equipped school than in a specific small, less well-equipped school, and he may state the probability that the same relationship will hold in a future comparison of another such pair of schools. He will not state the cause of this relationship, if he remains a scientist, because he does not have data about the cause of the relationship. A scientist may state that a high crime rate is associated with slum-living, but if he states a causal relationship between these two variables, he has departed from the role of scientist — he is now guessing.

The scientist, as a scientist, is not interested in change, one way or the other. He has no value judgments about what is good or desirable about his findings. He may have personal values, but these are kept out of his statistics. He is interested in what is — not in what should be. As long as a witness adheres to the presentation of data about what is, his testimony will be scientific — and cold.

This does not mean, however, that scientists never deviate from this cold recitation of fact. It does mean that the testimony of a scientist, as a scientist, is empirical, demonstrable in fact, and predictive in terms of probability. When an otherwise scientific witness imbues his empirical findings with meanings (which meanings are the creations of his own psychology) he is acting the role of the artist.

The testimony of the artist is that which presents judgments or interpretations about some topic. A witness may present to an investigative body his judgment that larger, well-equipped schools produce more intelligent pupils than smaller, less well-equipped schools. Such a witness would be hard pressed to find factual support for his

statement, but he has given his judgment on the topic. His is not the role of the scientist; he is an artist. In another instance, a witness may state that, as he understands the available data, it is clear that slum conditions are a major cause of crime because, factually, a large percent of crime is committed by those who live in the slums. This is an interpretation, and again the witness would be unable to present factual evidence for his interpretation. This witness is also an artist; he is not a scientist.

Generally, witnesses who play the role of artist do so because they are interested in effecting changes in the social order, or in preventing such changes. Basic to these desired or undesired changes are value judgments about what is good or desirable, and these lead directly to the witnesses' judgments or interpretations. Thus, the testimony of such witness cannot be scientific. This is not to say that such testimony should not be presented; it is to say that, when such testimony is presented, it should be clearly labeled as artistic — not as scientific. The presenters of such testimony should not be called scientists; they should be understood clearly to be artists who are interested in painting a special kind of picture of the social world. Thus, when a social scientist presents judgments and interpretations, he is not guiding the legal processes as a scientist. He might be guiding the legal processes quite effectively, however.

The Attitude of the Investigative Body.

Investigative bodies frequently operate on a limited budget and with limited time. This means that not every potential witness can be heard. It is obvious that, in the recent hearings on pornography and adolescent crime, not all of the available and competent scientists were heard. Someone had to select among the available witnesses so that the operations of the investigative body could be kept within the time and budgetary limitations. Those scientists who were not heard by this body played no role in guiding the legal processes.

Sometimes investigative bodies are extremely sensitive to public pressures, and for this reason, they limit the type of witness who is to appear before them. Consider the plight of the chairman of an investigative committee who, for one reason or another, wishes to collect data on heart diseases, and who is also to stand for re-election to the Congress from a rural area that is primarily dairy farm country. Such a chairman would hardly accept as a witness a physician or bio-chemist whose testimony would indicate that milk drinking was

directly related to the incidence of heart diseases. A potential witness with such evidence would, under these circumstances, play no role in the guidance of the legal processes.

Hesitancy and Censorship.

The roles that may be played by social scientists may be sharply curtailed by these two factors. A competent person may hesitate to submit himself as a witness because of the possible personal attacks that may be directed against him by the group that objects to his evidence. This person may feel, further, that there is no point in his coming forward as a witness because the evidence that he has to offer is not the evidence desired by the investigative body. He may feel that the time and effort required to prepare the evidence for presentation will be wasted. In such a case, a competent scientist plays no role at all in shaping either public or legal opinion.

Competent scholars may also hesitate to act as witnesses for a more practical reason — the possible loss of their jobs. Although academic freedom is a theoretical right of the scholar, there are many ways in which this right is negated. It is not uncommon for pressure groups so to bombard a university administration with unfavorable publicity, or threats of it, that the university administration discharges as “incompetent” a professor who exercises his right of academic freedom. Knowing that they run the risk of unfavorable publicity, university administrators have privately warned potential witnesses to avoid the placing of themselves in positions whereby criticism might be brought on the university. The same problem plagues potential witnesses in business, where the boycott is the frightening threat. Even with the protection of civil service status, government employees have had to bow to a censorship which prevents the publication of any evidence that is apt to offend any segment of the voting population.

A similar type of censorship exists among some scientific societies and their publications. Whether they fear criticism, or whether they are committed to propagating a liberal point of view, some otherwise scientific societies limit their membership to those whose scientific activities are proper and moral, *i.e.*, not apt to offend anyone. Their journals reflect this, and these journals refuse to accept for publication any article which is designated as “controversial”, which apparently means contrary to the public clamor. Sometimes a scientific journal takes a moral position in rejecting articles that express an undesired point of view. At other times, a scientific journal will

permit an associate editor to present picayune objections to the style of writing, or to the statistical presentation which objections, if applied generally, would invalidate a large number of the already published articles in that journal.

It may be that these social limitations are simply different aspects of the same underlying psychological process — the desire not to oppose the public clamor. But whatever it is, because of these social limitations, there has been created an impression of solidarity of liberal opinion which has very effectively reduced the role which capable scientists of all disciplines could play in advising the investigative bodies. Not only are the capable people hesitant about approaching the investigative bodies, but the latter are kept in almost complete ignorance of the former by the clandestine type of censorship exercised.

II.

BETTER INFORMATION FOR INVESTIGATIVE BODIES.

If the investigative bodies are to come to decisions that are in keeping with reality, they must be provided with information that is real. Ideally, this information should satisfy three criteria: it should be empirical, it should be verified, and it should be inclusive. By empirical, I mean that the information should be what exists, and not what someone hopes. By verified information, I mean that the data should have been collected from more than one source, by more than one scientist. This is to assure the investigative body that receives it that the information was not a chance occurrence, or that the data were not described according to the convictions of the scientist. By inclusive, I mean that, within the framework of the hypothesis that is being investigated, the information should express all that is known about the subject of the hypothesis, and not only the desired side.

The three criteria mentioned above may not always be achievable. Where factual data about a topic do not exist, the information presented to the investigative body cannot be empirical. If social scientists were asked to testify about the effects of atomic warfare on adolescent crime, no statement on this topic could, so far, be empirical. The scientist would be obliged to guess. Moreover, the testimony of artists, authorities, and incompetent witnesses fail to satisfy these criteria.

The investigative body also needs access to all potential witnesses. At present, because of the restrictions described previously, only one

viewpoint is widely available, and that places the investigative body in an unfavorable position in reaching its decisions. Moreover, some of the witnesses presently available to the investigative bodies are qualified only to present a point of view; they are artists who are interested in changing the social order to their own liking. They are totally unqualified as scientists, but this fact is either unknown to the investigative bodies, or is accepted by them as the best that can be had.

The investigative bodies also need information furnished by scientists who are free of the social pressures and censorship that were described previously. It would be pleasant to plead for and obtain an end to such pressures and censorship, but this would not happen. Instead, my plea is made for an agency which would act, in its relationship to the investigative bodies, as an agency, and not as a group of individuals. Social pressures and censorship, to which individuals are so sensitive, should be reduced markedly, particularly if the agency were sponsored jointly by competent and respected professional organizations.

It is suggested that a committee be formed as a joint venture between the American Bar Association and the American Psychological Association, and that this committee be known as the Committee for Advising Investigative Bodies, ABA-APA.

III.

COMMITTEE FOR ADVISING INVESTIGATIVE BODIES, ABA-APA.

The actual structure of such a committee will have to be worked out in greater detail than I shall present here, but the general idea is this: both ABA and APA will appoint two coordinators who will meet as a committee of four. Since there are two clearly recognized points of view regarding social problems that come before investigative bodies, each of these two professional societies will have no difficulty appointing one "liberal" member and one who is "not-so-liberal."

On request of the investigative body, both ABA and APA would publicize among its membership a request for volunteers to serve as examiners of the available data pertinent to the topic before the investigative body. Interested members of both professional bodies would send their names to the appropriate one of the above committees. From among the applicants, the appropriate committee would select a panel of three so that, in all, a panel of six would be selected. Half of the panel would be selected by the "liberal" committee members,

and the other half would be selected by the other committee members. At its discretion, the panel would separate the field of investigation any way it chose, or work in any manner desired, except that at the end of a specified period, two separate written reports must be submitted to the committee—one from the “liberal” members, and one from the others. Both of these reports would be directed to the investigative body without alteration by the committee.

There would be several advantages to such a committee. Since each panel would be aware of the work of the other panel, each should be hesitant about ambiguous statements, or the masquerading of opinion as fact. Value judgments should be held at a minimum, and empirical evidence should increase. Rancorous arguments in public should disappear, and so should costly sessions in which investigative bodies examined and cross-examined witnesses.

To the investigative body, the advantage of having evidence tailored directly to its needs should be especially attractive. In addition, the committee could be extremely flexible, and by the proper choice of members on the panels, many specific problems could be handled simultaneously. This should be a clear financial advantage to investigative bodies.

This method of presenting evidence could materially reduce censorship, and should certainly reduce the other social pressures on witnesses. Since the committee reports would be official documents, the prestige of both ABA and APA would be behind them. The influence of social pressure groups should be diluted under this scheme, but probably not completely eliminated.

There are probably disadvantages. One is possible bias in panel appointments, but since these appointments would be publicised to the ABA and APA membership, this should not be serious. The greatest possible danger is the rejection of this plan by either ABA or APA, or the investigative bodies.

IV.

SUMMARY.

It should be clear that I believe that social scientists should play a role in guiding legal processes. But it should be equally clear that I believe that their role should be that of the scientist, not that of the progandistic social reformer.

Some system should be created whereby the factual offerings of the social scientists could be placed before investigative bodies, not

as the result of personal jousts among social scientists, but as the result of scholarly and dignified study. This system should also assure the investigative body that propaganda and special pleading, when present, would be so clearly marked that such testimony could not be passed as scientific fact.

A Committee for Advising Investigative Bodies, ABA-APA, as a joint venture between the American Bar Association and the American Psychological Association, is suggested as a possible advantage over the present system of advising investigative bodies.