

April 2021

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### Recommended Citation

Robert B. Yegge, The Implications of Science-Technology for the Legal Process, 47 Denv. L.J. 549 (1970).

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## THE IMPLICATIONS OF SCIENCE-TECHNOLOGY FOR THE LEGAL PROCESS

### INTRODUCTION

IN 1963 the University of Denver College of Law faced what was then a novel question: "What is the relationship between law and the behavioral sciences?" As a first step toward finding the answer, we called together a group of scholars and practitioners from the bench, the bar, and the behavioral sciences to explore the question and to give us some advice on what our institution could do to utilize the social sciences in broadening legal education.

Our advisors told us that justice was really our topic and that the subject dealt with the "[d]etermination of the controversies that arise in society between man and man or between the individual and the state in a way that takes due and proper account both of demands of general legal principles and of the merits of particular concrete cases."<sup>1</sup> We were told, of course, that

there is more to justice than this. Law is not a closed system; it lives and progresses and gains its great momentum only when the passion for justice is shared by all members of the society . . . . [I]t is not enough that justice *be* done. It must also *be seen* to be done. Persons who come into touch with the functioning of legal institutions, [sic] as jurymen, witnesses or parties, [sic] must be persuaded of law's rightness, must be brought to say: "Yes, that was right; that was fair."<sup>2</sup>

Further, the College of Law was reminded of the

law explosion, the proliferation of controversies and legal problems of range and number quite beyond anything with which an earlier legal order has ever had to deal. To a limited extent, this law explosion is a function of the population explosion: twice as many people, therefore twice as many law suits, twice as many offenses, twice as many delinquencies.

. . . .  
. . . Contributing to the law explosion are the tasks created for law administration by the vast and almost incomprehensible technological developments of this century.

<sup>1</sup> Jones, *Law and the Behavioral Sciences: The Case for Partnership*, 47 J. AM. JUD. SOC'Y 109 (1963).

<sup>2</sup> *Id.* at 109, 110.

. . . Whether we like it or not . . . the administration of justice is no longer a handcraft like custom tailoring or cabinet making.<sup>3</sup>

We were also told that "this is a time of vast social change, a time in which we encounter not only massive increases in population but also new social conditions, new ideas of social justice, new and unsettling demands for equal opportunity and status."<sup>4</sup> Indeed, "law must be stable, and yet it cannot stand still. If law stands still, it loses its powers as a force for social stability."<sup>5</sup>

Lastly, we were told that law must be responsive to social change. Law, in a sense, has been a technology in search of a "pure science" partner . . . . Social science insights and methods are there to be drawn on for the improvement of legal institutions . . . men of law must ask the behavioral scientists to come over into Macedonia and help us. Perhaps the greatest task the legal scholars, judges, and practicing lawyers have in the years ahead is to devise patterns of *colleagueship* . . . within which the subtle and disciplined knowledge and techniques of the social sciences can be drawn on for the advancement of legal understanding and the improvement of legal institutions.<sup>6</sup>

The Chairman of the Committee of Advisors back in 1963 was Dr. Donald R. Young — our Chairman for this conference. Under his watchful and thoughtful eyes, some significant new directions were given to legal education at the University of Denver College of Law. Initially, the Administration of Justice Program, funded by the Russell Sage Foundation, provided a base for curricular and research activities; and very soon the idea of developing a partnership between law and the behavioral sciences was accepted and began to spread through the curriculum so that today social science concepts and materials are found in most of our law school courses. An important medium for this grass-roots development has been the appointment of social scientists, who are not lawyers, to the full-time faculty as full colleagues of the legally trained faculty. Presently there are four sociologists, an economist, a social psychologist, a political scientist, and a theologian serving on the law faculty along with their colleagues who hold law degrees.

The rationale for the conference of advisors in 1963 is recalled today. As we pursue our tenacious commitment to the implementation of a partnership between law and the behavioral sciences, we are continually reminded of the equal importance of a pure science partnership — a slightly different twist on the 1963 summary observations just described. Indeed, we find that the "law explosion" has a dimension not specifically observed in 1963 — an explosion triggered by a science-technology fuse; because for the legal system (which has repeatedly been shown not to be a closed system) to be just, there must be due

<sup>3</sup> *Id.* at 110.

<sup>4</sup> *Id.* at 111.

<sup>5</sup> *Id.* at 111.

<sup>6</sup> *Id.* at 112.

and careful account taken of the assessment of technology which science has wrought. And technology has shown us certain ways for the older legal system to convert technological handicrafts into that system. Clearly, the effects of technological developments have underscored the need for the law to be responsive to social change.

Now, 7 years after our initial explorations and subsequent deep involvements with the partnership between law and behavioral sciences, we, the College of Law faculty, feel compelled to explore carefully and systematically the case for a partnership between law and pure science, including its technological implications. Under the expert guidance of the same distinguished Chairman, Donald R. Young, and with the able planning assistance of Professors John H. Reese, of our own College of Law, and Ernest M. Jones of the University of Florida Law School, we have gathered experts in science, technology, and the law together to give us the benefit of their good advice. We need directions for seeking another partner. While we think that our model for establishing a partnership with behavioral scientists has been a viable one, we cannot be assured that the same paradigm is operative for incorporating the knowledge of science and learning to assess its technology.

Our primary aim is to look at the directions which legal education might take in view of the impact of science-technology and the need for assessment. Hopefully, what legal education does, the law will do also. Right or wrong, we feel that as an institution committed to training future generations of law men (who will make, interpret, and reform laws), we should be engaged critically and constructively in the business of considering the implications of science-technology on legal process.

It might be fallacious for us to draw on the experiences we have had with the behavioral sciences. Yet, let me offer a few observations about that program, all of which we may wish to challenge when we think about interdisciplinary efforts which combine law, science, and technology.

First, we have found the strategy of full and equal collegueship of non-lawyer behavioral scientists and legal scholars to be a most desirable initial structure.

Second, we have found that introduction of experimental and untested courses into the curricular offerings has been frustrating but, over the long haul, productive. At least, students taking the experimental courses have begun to think in interdisciplinary terms and, more importantly, to research and write in those new terms with the guidance of social science teachers, both to the advancement of the partnership and, we believe, to the advancement of knowledge.

Third, after several years of groping, we have learned that clinical legal education plays an important part in the ultimate success of the

partnership between law and the social sciences. While it was somewhat unexpected, we have found that the real and lasting merger of interests between law men and social scientists comes when real life legal problems are actually confronted, particularly in the area of the public interest law suit.

Fourth, our students have observed — and we think it is partially due to our systematic fusion of social science methods and knowledge into the legal curriculum — that law is inadequate to handle all social problems. In working with students from other disciplines, law students have come to this realization. There is a great irony in this recognition by law students that their intellectual horizons are broadened by working with students in other disciplines, an effect which might be described as the “humanizing” influence of scientific inquiry on law and as the study of the real world rather than merely the individualized case.

Science and its technology offers, we believe, great challenges to law and therefore to the education of those who make, interpret, and administer law. We called this conference to help us begin to chart a course for a partnership between law, science, and technology at the law school level, with the sincere and optimistic hope that we may build another successful program to the end that justice shall be re-explored and, through that re-exploration, improved.

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