

A PROMISING MARRIAGE

Social Science Research in a Public Interest Law Firm

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## Introduction

This paper reports on the experience of conducting social science research in a public interest law firm. The Center for Public Representation, Inc. is an independent, non-profit law firm in Madison, Wisconsin. The Center is directed by a Board of Wisconsin citizens, and provides representation for unrepresented and underrepresented groups in the state. The Center currently works in a number of project areas on behalf of many groups, including consumers, women and minorities, the elderly, the environmentally concerned, juveniles, ex-offenders, the mentally ill, and the developmentally disabled. The Center also has a clinical program for University of Wisconsin law students and a citizen's training program.

Among the major activities of the Center since its initiation four years ago, has been a program of social science research. Since the program is relatively unique, I believe that a description of our experience is of interest to researchers, attorneys, and public policy decision makers.

## Origins

In the fall of 1973 there began initial discussions by a group of Wisconsin law professors, lawyers and citizens interested in the formation of an institution to provide both clinical education for law students in administrative law and representation for unrepresented groups in state governmental agencies. In the course of these discussions, it was suggested

that the institution should include a social science research component. The idea of social science research on law was well accepted by the University of Wisconsin Law School. In a tradition that goes back to John R. Commons, Wisconsin, led by people like Willard Hurst and Jacob Buescher, pioneered in the development of "law-in-action" and social research about law. Thus it was not surprising that a group associated with this tradition would conclude that social science research could contribute to the goals of advocacy and clinical legal education. Thus, when the articles of incorporation were drafted and the Center for Public Representation opened its doors in March 1974, social science research on law-related subjects became one of the four goals of the Center.

When the Center was first conceived, its founders believed that considerable foundation funding could be obtained for unrestricted support of the Center and its goals. This did not happen and the Center has been supported by a variety of sources on a short term basis for specific projects. The research program started off with no financial support: the first projects were conducted in conjunction with an Administrative Process seminar taught in the law school by the first Research Director. During the subsequent four years, the Center has developed a research program of considerable variety and reputation with a budget for fiscal year 1977-78 of about \$200,000. I have attached an appendix which lists all the research publications released by the Center.

What is "Social Science Research on Law-Related Subjects"?

In preparing for this talk, I reviewed in my mind the research projects which have been undertaken by the Center in the past four years. While it was clear from the beginning of the Center that the research program was to be integrated with the overall purpose of the Center, that is increasing the representation of unrepresented groups in the state governmental processes, the exact way in which the research program was to integrate with this overall goal was not fully clear to us in the beginning. As I consider what we have actually done, it has become clear to me that we have undertaken projects for four different purposes, and that to understand the research program at the Center, it is essential to understand the four purposes.

The four purposes are: a) to determine action directions, b) to evaluate advocacy -- ours or others, c) to gather information to develop public advocacy positions, and d) to evaluate the impact of specific laws, and decisions ostensibly promulgated or decided to benefit our client groups.

a) Research can provide a context for making policy decisions about the direction and nature of future advocacy efforts. An example is the pardon study that the Center undertook as part of its project to eliminate barriers to the reintegration of persons with criminal records. In the course of our program, it became clear that a pardon was a widely used technique in Wisconsin to help overcome the stigma of a conviction. We decided to gather as much information as we

could about access to and fairness of the pardon process and utilized an assessment of the files of successful applicants for pardons. The research findings indicated that pardons were given out fairly once you applied, but that potential recipients from Milwaukee (which contains over half the population of the state and the great bulk of the minority group population) were underapplying for pardons. As a result of this finding, we embarked on a campaign to distribute more information to eligible ex-offenders, targeting the Milwaukee area.

b) Evaluating the effectiveness of advocacy, both the Center's and others, has been another theme of our research endeavors. For example, one of the goals of the Center has been to train non-lawyers in advocacy, enabling a wider number of people to provide representation for unrepresented individuals and groups. The Center conducted several training sessions from 1974-1976, and co-research director, Henry Lufler, conducted an evaluation to determine how effective the training was in teaching skills. An analysis of the training and evaluation was incorporated in a Center publication called "Meeting Legal Needs Without Lawyers -- An Experimental Program in Advocacy Training." The study was very helpful in indicating that the training was working, and that our students were using their new skills. As a result we have expanded our lay advocacy training efforts. We would have very much liked to have done a much more elaborate study of the effectiveness in the field of the people we trained, but we could never find funding for such a project.

We have also evaluated the advocacy of other institutions, whose goal is to provide representation for unrepresented groups. Under a contract from the State Department of Administration, we studied the public intervenor, a program where an assistant Attorney General is designated the public intervenor to represent the interests of the public in safeguarding waters in Wisconsin. This program had been in existence for nine years. However, neither the public nor the Attorney General fully understood the potential of this office as a defender of the unrepresented interest in conservation of natural resources. We brought in Phillip Dubois, a political scientist, who worked with Center staff to analyze the decisions made by the intervenor to take cases, and the types of advocacy utilized by incumbents of this office. The result was a study, eventually published by the University of California Center for Environmental Studies. This study developed a model of the appropriate role for the office, contrasted past behavior with this model, and made several suggestions for the improvement of the program. These improvements have been implemented by the state and the public intervenor has assumed higher visibility posture, and a more thoughtful program as a direct result of that study.

We are now in the middle of a study of the effectiveness of the state councils for the Developmentally Disabled under a grant from the Health, Education, and Welfare Region V office. This study, directed by University of Wisconsin Sociology Associate Professor Howard Erlanger, examines the role that these Councils, which are official bodies made up of state bureaucrats and

private citizens, can play in advancing the interests of the developmentally disabled. Like the public intervenor study, the DD project draws on social science theory to develop an understanding of the advocacy potential of the Council, and on interview data to determine how actual Council performance relates to this model. The resulting monograph will be used in a training program for DD Council members in the region which we will carry out over the next year.

c) Gathering data to help develop public positions is the aspect of our research which is probably closest to the role social science research serves in the private practice of law. Over the last year, the Federal Trade Commission has begun an innovative program financing the cost of consumer intervention in Federal Trade Commission rulemaking. This program has allowed consumer groups who wish to participate in the FTC proceedings to conduct research to back up their presentations. The Center has recently completed such an intervention. The Center, utilizing university professors and Center staff, evaluated the effectiveness of the Wisconsin used car disclosure law to determine what improvements might be made in the FTC proposed rules based on the experience of Wisconsin consumers. To do this, we designed a classic legal impact study. The study compared the situation of Wisconsin consumers before and after the promulgation of the Wisconsin law, and also compared the current Wisconsin situation with that of two similar states which do not have such a consumer protection rule. This data, plus a cost benefit analysis of the Wisconsin rule prepared with aid

from University of Wisconsin economists, allowed us both to support the principle of the FTC rule and criticize specific aspects of the Commission's proposal. We have just applied for funds in connection with the Children's Advertising rule proposed by the FTC. This rule would limit some and ban other types of advertising reaching children. We have joined with several researchers at Wisconsin and other universities to propose a behavioral study of childrens' reactions to TV ads. The data would support our testimony at the forthcoming hearings on this rule.

d) Evaluation of the impact of specific laws aimed at helping our client group is the fourth purpose of the research program. Often legislation is passed or cases are decided whose ostensible purpose is to help an otherwise unrepresented group. An example is the environmental impact statement requirement of the National Environmental Policy Act and its state progeny. These laws are designed to ensure that agencies have full data about the effect of their actions on the environment. The Center encouraged the Wisconsin Law Review to conduct an evaluation of Wisconsin's "Little NEPA". We felt that this statute was designed to aid the generally underrepresented environmental interests, one of the "groups" we represent. With funds from the National Science Foundation, Law Review students, Center staff and personnel from the UW Institute for Environmental Studies demonstrated that agencies had often ignored WEPA, or had allocated limited WEPA funds inefficiently.

In conclusion it is interesting to note that the Center's largest research project, now drawing to a close, is a study of



school discipline in a Wisconsin medium-sized city and rural districts. This "Students' Rights and Remedies Project" involves all four aspects of the Center research program since it is an effort to find out where in the school discipline process advocacy would be useful, to evaluate the effectiveness of school ombudsmen, to gather information on the possible relationship between discipline and juvenile court appearances, and lastly to evaluate the impact of specific laws, in this case, a Supreme Court decision embodied in a Wisconsin statute dealing with due process rights in suspension and expulsion.

It is also important to note the range of techniques used in the Center's social science research program. These include surveys and detailed quantitative analysis of survey data, anthropological observation of complex institutions like schools, legal impact studies, cost benefit analyses, and systematic and theoretical modelling of the role of advocacy in the legal-governmental process. Moreover, having used quasi-experimental design in our used car study, we are now hoping to include controlled experimental designs as part of the children's advertising project.

The wide range of techniques used is a result of our close relations with the UW law and social science community. As you know, Wisconsin has one of the largest groups of researchers in the nation interested in the application of social science to research needs in the legal process. Our Co-Director for Research, Professor David Trubek, is a law professor with a background both in quantitative methods and social theory. With

the help of CPR Board members Joel Grossman of the Political Science Department and Stewart Macaulay of the Law School, he has been able to mobilize the talents of a wide range of university-connected researchers, thus allowing us to experiment with many techniques and conceptual approaches.

Strengths and Limitations of a Research Program in A Public Interest Law Firm

This leads into the final section of my paper which deals with the strengths and limitations of the research program in a public interest law firm. I would say one of the greatest benefits of the research program has been the interaction with the academic community. This contact is not confined to the law school, but also includes Journalism, Political Science, Economics, Sociology, Business and Education. This contact has been fruitful both in enabling the Center staff to deal on a more theoretical and more empirical basis than they otherwise have done. On the other hand, the contact with the Center has been a great benefit for the academics. Not only does it give them income, but it also gives them an opportunity to use their skills to advance interests which ordinarily they don't get an opportunity to represent. I know this has been a great attribute particularly for the Business school professors who ordinarily work on behalf of business and have been pleased with the opportunity to use their skills to aid the consumer interest. Also, Center research has been an opportunity to develop data which can feed further academic research. For example, researchers at the UW Institute for Research on Poverty

have used the used-car study data to examine the effect of social class on consumer complaint behavior. And researchers in the newly-formed UW Disputes Processing Research Program (which we are co-sponsoring) are using data from this and other Center studies in basic research on techniques for the resolution of consumer and other disputes.

A second strength of the research program is that it has generated funds to keep the Center going. It may be surprising to some of you, but in fact, the research program of the Center has been at several points in our history the source of funds to keep the whole institution afloat. There were a couple of years where the Center's research program was almost as large as the advocacy program. This should not be overlooked as a strength for any organization!

In dealing with the limitations and problems of the research program, let me start out with some discussion of the criticism from the outside. One remark often heard about the Center's research program is that the concept of research in an advocacy institution is a contradiction because research is value neutral, and when conducted in an advocacy institution it will be biased. The answer is of course the bias is only in the selection of the research upon which we embark. That is, any research project which we begin really has to fall into one of the four overall objectives which I listed earlier. It has to relate in some way to increasing our information about representing the unrepresented. Once the research actually begins, however, there is an effort to ensure neutrality in which research

designs are constructed, executed and evaluated. In this way the Center is no different than any researcher who selects the problems and hypotheses based on his or her interest and predilection. In this effort we are helped by the fact that the researchers are often drawn from the University on a project basis. Thus they bring an independent perspective to the studies that helps ensure the validity of design and neutrality of interpretation. As a result we have heard little if any objection from funding sources or advocacy opponents about the neutrality of the Center's research.

However, there are real problems in research in a public interest law firm. One is the integration of research and advocacy within the institution. Many of the advocates do not appreciate the value of research. Unfortunately, as many of you are aware, law school training rarely emphasizes on the understanding of the value of social science research to the study of law. Our advocates are primarily lawyers and law students, and many of them do not understand the value of what is being done by researchers. This becomes a matter of internal concern when you deal with allocation of scarce resources. The tension between the advocates and researchers also shows on salary issues. Lawyers are expected to work below market because of the purported psychic income of working in a public interest law firm. Is this also true of researchers? Should they be paid the market rate, or should they be paid below market? This is particularly difficult because we use academics to a large extent and we really have no alternative but to pay them at the University rate, which is considerably

above the rate for lawyers that are paid at the Center. We have begun to hire researchers who work exclusively for the Center and have no academic connection. If the Center research program expands and we do begin to hire a larger number of these people, the conflict over salary structures may increase.

Another problem relates to the kinds of project funding the Center gets. Often the availability of funds determines priorities rather than an assessment of the priorities of our client groups. Of course this is true of many non-academic institutions; the more commercial social science research operations also go where the money is. But the Center likes to view itself as being something different than Apt or Mathematica. There are times when we really don't look much different, although ideally our goal is to do research in areas where we sense needs rather than where funding is available.

### Summary

As a practicing attorney and Executive Director of an advocacy institution, there is no doubt in my mind that the social science research program has been of tremendous value to our public interest law firm. It has added breadth, dynamism and intellectual balance to our public interest commitment. It has forced us to rethink our approach to some problems, and confirmed our tentative exploration of other issues and approaches.

It has not been easy to maintain a program of this type. We have been lucky in a number of ways. We've had strong internal leadership committed to this idea, both on our staff

and on our Board. We have been able to draw on a rich base of interest and expertise in the Law School and throughout the University of Wisconsin. We have been able to obtain researchers, Henry Lufner and Ellen Jane Hollingsworth in particular, who have been willing to take a chance on a new organization with an unstable financial base. And we have been able to secure research funding from state and federal government agencies who were willing to take a chance on a novel institutional approach to research.

What advice can we give to other institutions which might want to develop similar social science research programs within advocacy institutions? First and foremost, it is essential that such programs be directed by people who understand both social science and law and government. Successful projects must have both scientific value and advocacy impact. Therefore, while researchers can be drawn from many disciplines, it would be advisable to have the overall program supervised by people with backgrounds in both law and social science. Researchers, with advocacy understanding and a grasp of social science theory and method, have proven an essential link between our advocacy programs and our research effort. We have been able to locate such persons in the legal and research community as well as the University.

Secondly, access to University resources has been crucial. We have been able to draw on the University for ideas and people. We have maintained very close linkages with several departments and the informal law and social science faculty associated with

the UW Law School and the Center for Law and Behavioral Sciences. This relationship allows us access to resources that no advocacy institution could ever support on its own. The University relationship has allowed us to develop a research program that goes far beyond the immediate instrumental needs of specific advocacy projects. And in this way it has made the Center's research program increasingly attractive to serious social researchers.

We have been lucky that the resources at Wisconsin are so rich. The large cadre of law and society scholars there has made it easier for us to identify research issues, to anticipate immediate advocacy needs and develop more systematic studies, and to employ a wide range of sophisticated techniques. But the skills and ideas we have in abundance in Madison exist elsewhere, and with imagination and commitment can be mobilized by other groups who understand the potential of a program like ours.

This is not to say that there will not be tensions involved in the effort to unite social science research and public interest advocacy. There are few lawyers who fully understand the potential of research. Often advocates will place a low priority on such activities, or favor only the most immediate and instrumental studies. Often researchers may fail to understand the special problems of doing research in this setting. Few social scientists are trained to deal with the time pressure and resource constraints an institution like ours must confront. Moreover, not very many social scientists understand enough about the legal process to be able to add much to lawyer's intuitive understanding of advocacy processes,

or to grasp how research findings can be integrated in an advocacy process. And even the most sophisticated advocates and researchers will struggle over priorities and perspectives. Nevertheless, with leadership, commitment, and adequate support from universities and funding agencies, the difficult marriage of social science and public interest advocacy can be maintained. When it is, it will add an important weapon in the fight to create a governmental system in America that truly represents the interests of all our citizens.



APPENDIX:

RESEARCH PUBLICATIONS OF THE  
CENTER FOR PUBLIC REPRESENTATION

1974-1975

The Public Intervenor in Wisconsin

Principal investigators: Arlen Christenson, Professor of Law  
UW-Madison; Phillip DuBois, Political  
Science Intern; and David M. Trubek,  
Professor of Law, UW-Madison

Toward Fairer and More Responsive Government: A Study of the  
Need for Publicly Supported Advocacy and Review in Administrative  
Proceedings in Wisconsin

Principal investigators: Arlen Christenson and David M. Trubek,  
Professors of Law, UW-Madison

Automobile Insurance and the Ex-Offender: Effect of Criminal  
Records in Insurance Decisions in Wisconsin

Principal investigators: Michael Pritchard, Staff Attorney  
and Henry S. Lufler, Jr., Co-Research  
Director

"Providing Automobile Insurance in Wisconsin to Persons with  
Criminal Records" (Best's Review)

Principal investigators: Henry S. Lufler, Jr., Co-Research  
Director, and Michael Pritchard,  
Staff Attorney

Urbanist Participation in Design Decisions: Learning from NEPA

Principal investigators: Louise G. Trubek, Executive Director;  
David M. Trubek, Professor of Law,  
UW-Madison; and Wynn Gerhard, Legal  
Intern

1976

Executive Clemency in Wisconsin: Who Seeks Access to the Process  
and Who Gets Pardons

Principal investigator: Henry S. Lufler, Jr., Co-Research  
Director

"Agency Decision making Under the Wisconsin Environmental Policy Act" (Wisconsin Law Review)

Principal investigators: David M. Trubek, Professor of Law, UW-Madison, and Michael Pritchard, Staff Attorney, with staff members of the Law Review

1977

Energy and the Consumer

Principal investigators: Michael Pritchard, Staff Attorney, and David M. Trubek, Professor of Law, UW-Madison --

An Investigation of the Retail Used Motor Vehicle Market: An Evaluation of Disclosure and Regulation

Principal investigators: David M. Trubek, Professor of Law, UW-Madison; Michael Pritchard, Staff Attorney; and Jack Nevin, Assistant Professor of Business Marketing, UW-Madison

The Goss Case and School Discipline

Principal investigators: Henry S. Lufler, Jr., Co-Research Director, and Michael Roth and Jon Becker, Research Assistants

Public Advocacy: Administrative Government and the Representation of Diffuse Interests

Principal investigators: David M. Trubek, Professor of Law, UW-Madison, and Jon Becker and Don Hermanson, Research Assistants

Meeting Legal Needs Without Lawyers -- An Experiment in Advocacy Training

Principal investigators: Henry S. Lufler, Jr., Co-Research Director; Louise G. Trubek, Executive Director; and Judi Greenberg, Staff Attorney

Dispute-Processing in Schools

Principal investigators: Henry S. Lufler, Jr., Project Director; Ellen Jane Hollingsworth, Research Director; Joseph Frees, Senior Research Associate; Eric Haralson, Project Coordinator; and others

1978

Alternatives to Litigation: Ombudsmen and Others

Principal investigator: Joseph W. Frees, Senior  
Research Associate

Strategies for Action: Developmental Disabilities and  
State Government

Principal investigators: Louise G. Trubek, Executive  
Director; Arlen Christenson,  
Professor of Law, UW-Madison;  
and Howard Erlanger, Associate  
Professor of Sociology, UW-  
Madison, with Don Hermanson  
and Lynn Malchow, Research  
Assistants

Availability of Health and Life Insurance for Ex-Offenders  
and Persons with a History of Mental Illness, Alcoholism or  
Drug Abuse

Principal investigator: Dianne Greenley, Staff Attorney;  
Sharon Abel, Research Assistant;  
and Kay Simon, Legal Intern



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