

CAN SOCIOLOGISTS TALK TO LAWYERS?

Dear Sir:

A journal intended to furnish a forum in which lawyers and social scientists can carry on an "interdisciplinary dialogue" (*From the Editor*, Vol. I, No. 1, p. 6), must concern itself with communication problems between these two groups.

Language is, in part, an instrument for conveying ideas from one mind to another—in this instance, from the mind of the sociologist to the mind of the lawyer, and vice versa. Just as lawyers sometimes obscure their meaning by the use of legalese, so sociologists are apt to lapse into socio-scientese (sociolese? sociologese?). To the extent that this kind of writing fails to communicate the sociologist's message to the lawyer reader, the writing has failed in its purpose.

Sir Ernest Gowers quotes Lord Macaulay: "After all, the first law of writing, that law to which all other laws are subordinate, is this: that the words employed shall be such as to convey to the reader the meaning of the writer." (*The Complete Plain Words*, p. 12).

As a lawyer, I find myself wrinkling my brow over the writings of sociologists. Not that lawyers are guiltless, but I at least feel confident that if I do not understand what a lawyer is saying, it is because he is a poor writer or a muddled thinker. When I cannot understand a sociologist, I think my education is at fault.

Perhaps a dialogue (what else?) can be instituted that will help clarify and remove sociologist-lawyer communication difficulties.

I offer as a text some lines from the comment by Jerome H. Skolnick, "Social Research on Legality—A Reply to Auerbach," which appeared in Volume I, Number 1 of the *Review*, at page 107. The lines are:

We are all interested in "the effect of law on men and men on law." But this requires empirical study with guiding concepts and orienting hypotheses. *One* of these is the role of lawyers vis-à-vis the integrity of the legal system. As Selznick recently wrote, "Certainly a continuing pre-

occupation of the lawyer *qua* jurist is to enhance the integrity of the system and its procedures; but legal craftsmanship must also be concerned with bending a received tradition to emergent social needs, exploiting the resources of law for practical ends. When the tension between these commitments is faced, jurisprudence comes alive." The identification of such central issues is required for the development of a sociology of law.

If I read the above often enough, it begins, I think, to make some kind of sense, but it is like wrestling with a difficult modern poem.

The paragraph has the advantage, for purposes of analysis, of combining the work of two first-rate sociologists, for both of whom I have the highest respect. (The most stimulating class I had as an undergraduate was one in which Professor Selznick and Professor Abraham Kaplan joined their talents in a course entitled "Ethical Problems of Social Organization.")

The first sentence is: "We are all interested in 'the effect of law on men and men on law.'" That seems plain enough, but alas it is composed largely of a quote from Professor Julius Stone, quoted in Professor Auerbach's comment on Skolnick's earlier article.

The next sentence troubles me: "But this requires empirical study with guiding concepts and orienting hypotheses." What does the "this" refer to? Is there some kind of study other than "empirical" study of the effect of law on men and men on law? "Guiding concepts and orienting hypotheses" has a kind of noble ring to it, but it is socioscientese, and I would like to have Professor Skolnick try his hand at an English translation. Is the sentence, after all, anything more than a dressed-up commonplace? The fact that an "orienting hypothesis" conjures up for me a picture of a Red Chinese knight on a white charger is not Professor Skolnick's fault.

The next sentence: "One of these is the role of lawyers vis-à-vis the integrity of the legal system." Is "the role of lawyers, etc." a "guiding concept" or an "orienting hypothesis"? How does it function as a "guiding concept" or "orienting hypothesis"? What does Professor Skolnick mean by "integrity of the legal system"? What is the role of lawyers vis-à-vis that integrity? Can the sentence be written another way that might be intelligible to me, and to other concerned lawyers, untrained in the rigors of sociological thought?

The next sentence quotes Professor Selznick: "Certainly a continuing preoccupation of the lawyer *qua* jurist is to enhance the integrity of the system and its procedures;" it is only a semi-colon, but perhaps we had better pause here. I always think of "jurist" as the equivalent of "judge," but my dictionary does say it means one who professes or is learned in the

law. I question whether any lawyer, even a lawyer *“qua jurist,”* is at all preoccupied, let alone continually, with “enhancing” the “integrity” of the legal system. But if I knew what the sentence meant, perhaps I would agree.

The sentence continues: “but legal craftsmanship must also be concerned with bending a received tradition to emergent social needs, exploiting the resources of law for practical ends.” The term “legal craftsmanship” implies to me a concern with technique, with the job the lawyer does every day. I suggest that the lawyer, *qua* legal craftsman, is not at all concerned with “bending a received tradition.” His craftsmanship is dedicated to serving his client by negotiating a favorable agreement, drawing a document that will serve his client’s needs, or winning his client’s case. He does so without concern for “emergent social needs.” “Emergent social needs” are the concern of the legislator, perhaps of the appellate court judge, certainly of the private citizen. To the extent that a lawyer fills any of these roles, he is concerned. As a lawyer he has no special concern, except to the extent that as a member of a learned profession he feels a special sense of civic responsibility. But that is a feeling he might as well have were he an engineer or a sociologist. “Exploiting the resources of the law for practical ends” sounds like the kind of thing that big businessmen or large scale criminals are criticized for doing, yet Professor Selznick seems to feel it is desirable.

The last sentence of the Selznick quotation is: “When the tension between these commitments is faced, jurisprudence comes alive.” That’s beautiful, but, again, What does it mean? Is Professor Selznick saying that the lawyer is committed to “enhancing the integrity” of the legal system; that he is also committed to “bending a received tradition to emergent social needs”; that there is a “tension” between these commitments; and that when the tension is “faced, jurisprudence comes alive.” If that is what Professor Selznick means, I still do not understand. If I do understand, then it seems to me to be untrue.

Professor Skolnick closes: “The identification of such central issues is required for the development of a sociology of law.” What central issues is he talking about?

I am not trying to make a virtue of my ignorance. What I am really saying is: Help!

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