



**Action of the 2007-2008 American Sociological Association Council
By Unanimous Vote of those Responding
March 26, 2008**

Present by Vote: Margaret Andersen, Judith D. Auerbach, Patricia Hill Collins, Marjorie DeVault, Bonnie Thornton Dill, Evelyn Nakano Glenn, Arne L. Kalleberg, Michele Lamont, Douglas McAdam, Mary E. Pattillo, Frances Fox Piven, Marc Schneiberg, Gay W. Seidman, Robin Stryker, Donald Tomaskovic-Devey,

Absent from Vote: Dalton Conley, Clara Rodriguez, Mary Romero, Rubén Rumbaut

ASA Executive Officer Sally T. Hillsman provided the background information by email.

Background

ASA received a request for the Association requesting that it be a signatory in an *amicus* brief in a case before the Iowa Supreme Court. The brief supports the ruling of a trial judge in the Polk County District Court who excluded statements by non-social science "expert witnesses" who purported to summarize social science findings in child development, psychology, and sociology. The judge found these "experts" were not scientists under Iowa law and under the U.S. Supreme Court Daubert decision.

The Executive Officer reviewed the information below with President Arne Kalleberg and Secretary Donald Tomaskovic-Devey both of whom believed Council should consider this opportunity. Kalleberg said: "It's important for us to defend high quality sociological research as being real 'science.'" Tomaskovic-Devey added that "This is a very interesting, and potentially important, case for sociology. If we focus on the issue of who is an expert witness, this judge is essentially excluding purported witnesses because they are not sociologists or other empirical social scientists. This judge has made a major grant of legitimacy to our efforts as social scientists, insisting that ethicists and activists' expertise cannot be treated as if they were experts under Iowa or federal law."

The *amicus* brief is being written by the Lambda Legal Defense and Education Fund Midwest Office in the case of *Varnum v. Brien*. Varnum et al. are a group

of same-sex couples seeking the right to marry in their home state of Iowa. Defendant Brien is the Polk County Recorder and Registrar who denied the plaintiffs marriage licenses. Both sides moved at the trial level for summary judgment based largely on expert testimony

The trial judge focused, first, on determining who was an "expert," and rejected most of the defendant's witnesses as non-scientists. (The Iowa law defines experts as providing "evidence in the form of scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue.") The defendant's witnesses rejected by the judge were: Director of the McGill Centre for Medicine, Ethics and the Law, with a post-graduate degree in comparative law; two PhDs in Religious Studies at McGill; a PhD in Modern European History and President of the Howard Center for Family, Religion & Society; and a PhD in government and MPA in Economic Analysis and Public Policy. The judge ruled they had neither relevant social science training nor knowledge relevant to the issues that were presented in the brief (e.g., the impact of gay parenting on children's adjustment; how relations of adults in same-sex relationships compare with those in different-sex relations; the nature of sexual orientation). The judge also excluded several plaintiff's witnesses on the same grounds.

The judge then struck down para. 595.2(1) of the Iowa Code under which civil marriage of same sex-couples have been denied and granted summary judgment to the plaintiffs. Polk County is appealing asserting that their experts are "experts" and that the judge made errors in finding the Iowa Code unconstitutional under the Iowa Constitution.

The *amicus* brief ASA is asked to review and sign discusses only the expert witness issue. About thirty individual sociologists¹ as well as other social scientists, the American Anthropological Association, Society of Lesbian and Gay Anthropologists, and the National Organization of Gay and Lesbian Scientists and Technical Professionals have sign the brief. Other *amicus* briefs are being filed by the American Psychological Association and the American Academy of Pediatrics that will focus on child welfare issues.

The outline of the Lambda brief

1. There is a difference between real science and "junk science." Claims that do not reflect the following hallmarks of reliable scientific evidence and that contradict the consensus views of the vast majority of scientists in a particular field should be viewed with suspicion and qualify as "junk science."

- a) Scientists are ethically bound to be accurate and truthful in conducting research and describing research findings.
- b) Science, including behavioral science, is based on empiricism.
- c) Findings that reflect the cumulative results of many studies are preferable to those that derive from a single study.
- d) The peer-review process contributes to the reliability of empirical

- reports and literature reviews published in peer-reviewed journals.
2. It is important to keep "junk science" out of the courtroom.
 - a) The (federal) Daubert standard, and more importantly, the Iowa evidentiary standard explained in Leaf and other cases reflect these understandings about what constitutes reliable science—for example, empiricism, peer review, and acceptance of the theory or methodology by the scientific community.
 - b) Expert testimony is highly persuasive. Thus, when people who are not experts are permitted to misuse the language of science or to cast an unscientific opinion as a scientific fact, they can do damage to the reliability of courtroom fact-finding.
 - c) Past examples of the nefarious use of junk science to buttress discriminatory measures or that otherwise now can be seen as improper.
 3. The trial judge in this case was correct under Iowa law to exclude the five defense "experts" because the record reveals that they were offering opinions that were not based on empirical scientific findings and/or were unqualified to offer opinions in these areas.

Council Discussion

Council makes the decision as to whether the Association signs an *amicus* brief. Via email exchange, prior to a vote, various members raised questions about the issues. There was consensus that signing would be an affirmation of ASA's continued commitment to the fundamentals of empirical social science. However, some members were concerned that narrower "scientific" standards are being invoked for social scientists than would be invoked than for other experts, for example, medical doctors.

Council member Stryker, who has expertise in this area, commented that, with respect to ASA's interest in protecting the standards and integrity of empirical research in the social sciences, the brief appear very solid in protecting core scientific standards of empirical research—for example, that theories must be amenable to empirical testing, the desirability of peer review and the accumulation of evidence from studies using methods designed to ensure reliability and validity. She said that the brief also supports the position that when those who seek to be qualified by the court as experts opine their conclusions, they must articulate the methods they employed and data on which they base their conclusions so that the conclusions can be linked to some clearly identifiable empirical basis.

Stryker also noted that the brief does *not* argue that the five putative experts would have had to have degrees or even training in a particular, narrow social science field or indeed in *any* social science field as long as they can show they have relevant experience and skills to evaluate research quality and results. This would be consistent with the Iowa law that apparently says the witness

must be “qualified as an expert by knowledge, skill, experience, training or education.” However, the brief does *not* say that to be qualified as a social science expert around a particular issue, one had to do one’s own research on those issues. Instead, the brief is interpreting what counts as training, experience and skill very broadly (e.g., it looks to see if someone ever had any kind of course work at any level in any of the social sciences, and whether yes or no, it looks to see whether the person has any track record exercising work experience or skills that are relevant to being able to comment knowledgeable about the cumulative import of empirical research on the question of the relationship between same sex parenting and well being of children, etc. Stryker said that, in her opinion, the *amicus* brief does not, therefore, put the ASA on record as endorsing a narrow or rigid view of what “counts” as qualifications to opine as an expert on empirical issues within the broad domain of the social sciences.

The motion to sign the *amicus* brief was put to an email vote.

Motion: ASA Council approves the Association signing the *amicus* brief of social science academics and associations in support of the plaintiffs in Varnum, et. al. v. Brien (Supreme Court of Iowa, Case No. 07-1499).
Passed unanimously

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Peter Bearman, Columbia (chair sociology)
Timothy Biblarz, USC (chair sociology)
Larry Bumpass (Wisconsin, emeritus)
Rodney D. Coates (Miami University of Ohio)
Philip N. Cohen (UNC Chapel Hill)
Gerald Davis (University of Michigan)
Jennifer S. Earl (UC Santa Barbara)
Paula England (Stanford)
James Ennis (Tufts)
Jeremy Freese (Northwestern)
Frank F. Furstenberg, Jr. (University of Pennsylvania)
Jennifer Glass (Iowa)
Frances Goldscheider (Brown, Emerita)
Hayward Derrick Horton (SUNY Albany)
Verna M. Keith (Florida State University)
Andrew S. London (Syracuse)
Laura Mamo (Maryland)
James Moody (Duke)
Mignon R. Moore (UCLA)
Calvin Morrill (UC-Irvine)
Kelly Musick (USC)
Nicholas Periana (Northwestern)
Brian Powell (Indiana)
Susan A. Ostrander (Tufts)
Ross M. (Rafe) Stolzenberg (Chicago)
Mariana Valverde (Toronto)
Christopher Winship (Harvard)
James Campbell Witte (Clemson)
Lawrence L. Wu (NYU)