



4-1978

Neuro-Jurism: "The Advocacy Ailment"

Jeffrey S. Kluger

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Kluger, Jeffrey S. (1978) "Neuro-Jurism: "The Advocacy Ailment", *University of Baltimore Law Forum*: Vol. 8: No. 3, Article 3.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol8/iss3/3>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

information that could be revealed regarding the cause of cancer. Chemotherapy is treatment of symptoms, removal of carcinogens from the environment is prophylaxis, while recombinant DNA research offers the possibility of a cure. The more obvious medical benefits include curing inherited diseases through genetic surgery. Insulin for diabetics and clotting factor for hemophiliacs could be produced in large quantities and at greatly reduced cost. Antibiotics and vaccines could be produced inexpensively. There are also environmental uses for the technique. Hypothetical benefits include nitrogen fixing plants which would eliminate the need for costly fertilizers. Perhaps a microbe could be developed which would digest oil spills or feed exclusively on other pollutants.

These speculative benefits now appear to be very real. In June, a team of researchers at the University of California, San Francisco succeeded in isolating the rat gene which codes for insulin.⁹ Last fall, another team of California researchers from UCSF, the City of Hope Medical Center, and the Salk Institute, were successful in using an altered microbe to make a copy of a mammalian brain hormone that can act biologically in humans.¹⁰ These are giant steps toward the mass production of insulin as well as hormones and enzymes needed by the hundreds of thousands who suffer various forms of genetic disorders.

CONCLUSION

One of the legal and legislative trends of this country has been the shift from compensation for injury to prevention. In consequence, the burden of responsibility for safety has shifted from the final consumer of goods and services to the initial producer. Americans feel that no one should be exposed to any risk not of his own making.

While there is some justice in this view, there is very little truth. Not only is it impossible to control all the risks of everyday life, we doubt that it is even desirable. Nowhere is this more true than in pure science since the business of science is the unknown, and the unknown is inherently risky. Heedless of this fact, we have re-

cently, in the recombinant DNA debates, seen society demanding of scientists that they somehow guarantee the future. Further, applying this same faulty logic to science as to other areas of production, we now intend to supervise the unknown so that it, too, will always be safe.

What has caused our personal opposition to regulation is the fact that the legislation is aimed at hindering scientific *investigation* and not just the *application* of known principle. The overwhelming cry has been to prevent problems similar to those we now face in the area of atomic energy. Our problem with this argument is that we cannot hold with forbidding accumulation of any type knowledge. It may well be the most effective preventive of future problems but it also almost certainly prevents discovery of present solu-

tions as well. We feel that science is one of the indispensable cogs of our society and as long as this is true, a certain incalculable amount of danger must be faced by us all as an alternative to sure stagnation and decay.

- ¹ 190 *Science* 767 (1975) copy of original letter
- ² from the PBS Nova broadcast "The Gene Engineers"
- ³ 265 *Nature* 98 (Jan. 1977)
- ⁴ 266 *Nature* 209 (March 1977)
- ⁵ 197 *Science* 4305 (Aug. 1977)
- ⁶ 268 *Nature* 185 (July 1977)
- ⁷ 197 *Science* 348 (1977)
- ⁸ *New York Times Magazine* Aug. 22, 1976 Cavalieri, Liebe F. "New Strains of Life—or Death"
- ⁹ 197 *Science* 1342 (1977)
- ¹⁰ *Time* Nov. 14, 1977 at page 56 "E. coli at Work"

Neuro-Jurism: "The Advocacy Ailment"

by Jeffrey S. Kluger

Until early last year Bud Harper, a 46 year-old automobile mechanic, lived happily and quietly with his wife and two children in San Francisco, California. One afternoon he returned early from work and announced to his family that he was no longer employed. His wife asked him if he had been fired or had quit. He responded, "quit, fired, what difference does it make? Quid pro quo, n'est-ce pas?" Shortly thereafter Harper, possessing only a high school diploma, purchased a three-piece suit and began prowling the halls of the San Francisco Federal District Court Building with the explanation that he was looking for "clients" to "represent." Mrs. Harper, alarmed by these events, convinced her husband to see a doctor who diagnosed the malady as Neuro-Jurism. Since that time, Harper has deteriorated rapidly and is being kept alive only by forced intra-venous feedings, having refused solid food "as a personal protest against the Federal Court system's recent, dangerous trend regarding restrictive jurisdictional and standing requirements."

David Jalowsky is an all-pro linebacker for the National Football League's Green Bay Packers. During a recent game against the Philadelphia Eagles, Jalowsky mishandled a simple, rather routine blocking maneuver. Following the game, a member of the press questioned him as to the cause of such a glaring error. In response, Jalowsky said, "I assessed the situation on the field at the time and felt that rather than place myself in an adversarial position with the opposing team, I would attempt instead a negotiated settlement benefitting all concerned." David Jalowsky has N.J.

Until recently, Neuro-Jurism, like many other diseases affecting behavior, has been largely feared, misunderstood and as a result, ignored. As the disease progresses, once stable, well-adjusted individuals with little or no previous exposure to the law, suffer lightning-quick personality changes. Simple family arguments become intricately constructed logical diatribes. Familiar idiomatic expressions are rejected in favor of obscure Latin maxims. Mere grocery lists are expressed in volumes. Tragically, the family of the victim usually reacts with predictable revulsion bred of ignorance. So very little has been written or discussed regarding the disease that, as with schizophrenia, a physiological malady becomes confused with emotional weakness or insanity. As a result, all too many Neuro-Jurists are subjected to years of fruitless psychotherapy, drug treatments, commitment—and worse.

Medical researchers have only now begun to examine the convulsive, often startling history of Neuro-Jurism. Doctor Phyllis B. Snyder, a self-proclaimed “medical historian,” has been at the forefront of a rapidly developing theory that many of history’s greatest figures suffered from N.J. In her soon to be published book, *Courting the Supreme*, Dr. Snyder asserts that “a stunning, meteoric rise to fame, with no previous indication of such ambition, is a reliable, early sign-post of a potential N.J. victim.” Notably, she hypothesizes that former United States President Abraham Lincoln, originally a prairie rail-splitter, suffered from the disease. Dr. Snyder points out Lincoln’s “obsessive legal self tutoring which culminated in a successful law practice and eventually the presidency,” and cautions that “when an individual suddenly rejects his simple background and displays an insatiable thirst for the intricacies of legal problem solving, an N.J. examination is often warranted.” Dr. Snyder further suggests that, throughout history, untold numbers of insanity diagnoses were likely the result of an uneducated society’s assessment of Neuro-Jurism.

A baffling aspect of the disease is why many victims, like President Lincoln,

seem to be able to channel their symptoms into a productive vein, while others simply disintegrate into fruitless incoherence. Most researchers agree that the decisive element here is the point at which the symptoms are diagnosed and disciplined. The longer a victim is permitted to sink into a quagmire of diffuse legal reasoning, the less likely it becomes that his thought processes will be salvageable.

An encouraging example of early diagnosis and treatment is the case of athlete David Jalowsky. For years before his widely publicized legal explanation of his performance on the football field, Jalowsky had been dedicated exclusively to athletics with no apparent interest in the law. Within days, however, his condition progressed at an alarming rate. In a subsequent game he demanded that a suggestion by an offensive line coach regarding a defensive formation be “vacated on jurisdictional grounds.” He pointedly questioned his teammates as to what right, if any, they felt they had to “encroach upon the clearly marked territorial boundaries of the opposing team.” His frequent, unpredictable legal discourses off the field began to show a tragic blurring of the distinctions between football and the law. On more than one occasion he referred to the Chief Justice of the United States as “Coach Burger.” It was at this point that team physicians referred Jalowsky to specialists who diag-

nosed the problem as Neuro-Jurism. Shortly thereafter, he was admitted to the University of Wisconsin School of Law where his symptoms were redirected into professional legal pursuits. Jalowsky is now close to graduation and well on his way to dual careers in football and law.

Critics of this approach to coping with N.J. argue that it may be successful on a small scale, but universal treatment of all victims in this manner would lead to an unwieldy glut of attorneys flooding an already lean job market. In a recent televised interview, Neuro-Jurism therapist Phillip Erno responded angrily to these charges and asked, “which is more desirable, an over-abundance of incomprehensible intellectual cripples or an over-abundance of well educated attorneys? And don’t say ‘what’s the difference,’ I’ve heard the joke before.”

Most N.J. researchers, Dr. Erno included, do concede that such treatment is merely a stop-gap measure, useful until a better answer can be found. Although an absolute cure seems to be far off, recent significant breakthroughs have led to a good bit of cautious optimism in the nation’s seven main Neuro-Jurism treatment centers. Last year, scientists discovered a small, independent cortex at the base of the human brain which is believed to control the most primitive of human responses, notably, aggression, territoriality and political party affiliation.

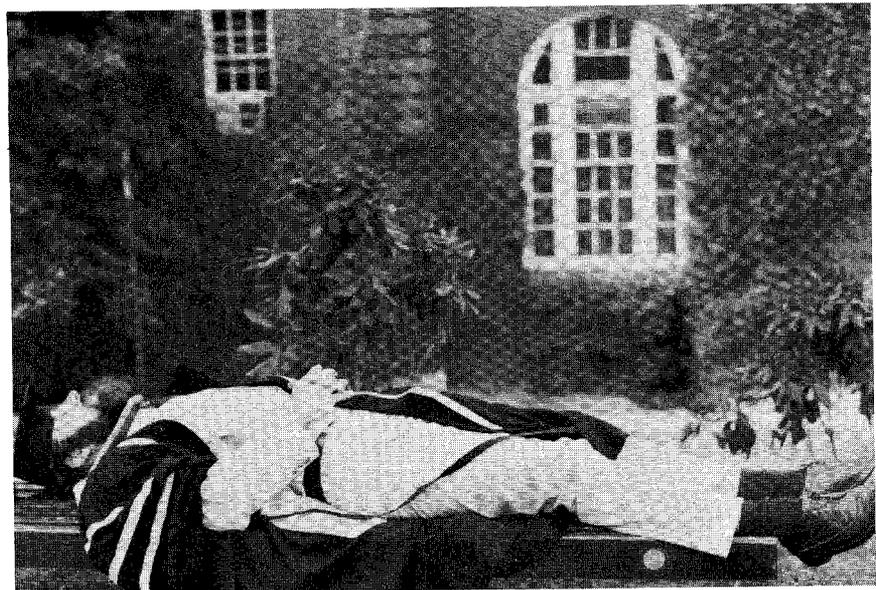


photo by Ronald Gravitz

This region has been dubbed the "reptilian brain" in that its discoverers hypothesize that it represented the entirety of the brain of mankind's amphibious ancestors. Last December, while researching this new discovery, Dr. Melvin Cooley, a leader in N.J. investigation, uncovered a region below the "reptilian brain" which he believes guides even more primitive functions. Dr. Cooley suggests that this walnut-sized knot of grey matter "controls the hormonal secretions which stimulate man's need to engage in—and win—intricately constructed interpersonal disputes." Labelling his discovery the "litigal cortex," Dr. Cooley explains that "human beings continually place themselves in competitive positions with other human beings and seem to take a great deal of pleasure in doing so. This trait is evidenced uniformly throughout the evolutionary chain. Is there really that much of a motivational difference between two dogs circling one another menacingly and two attorneys trading rhetorical blows in a court of law? I think not."

Consistent with these discoveries, Dr. Cooley has established what he believes to be a partial explanation for the cause and progress of the disease. His recent article entitled "Neuro-Jurism: Reverse and Remand," hypothesizes that N.J. is caused by a toxin in the blood, of a yet unknown nature, which affects the central nervous system, causing inflammation of the litigal cortex, which in turn slowly begins to dominate all other brain functions. The Cooley article suggests that such an elusive toxin may be not unlike the often sought chemical origins of alcoholism.

The American Medical Association, in apparent agreement with this comparison, published a report last year examining the stark parallels between compulsive jurisprudential and alcoholic cravings. Notably, the A.M.A. described the painfully convoluted reasoning upon which both the alcoholic and Neuro-Jurist rely to justify their behavior. The report described the explanatory remarks of a random alcoholic who insisted that he had "a mere drinking problem" and could "stop at any time." Little difference was seen

between these self-deceptive comments and those offered by recent N.J. victim Leonard McCoy while trying to justify his request for membership in the Minnesota State Bar Association after having neither attended law school nor taken the bar examination. In his membership application, Mr. McCoy argued, "lack of formal prerequisites should not prevent my admission, particularly when other, more compelling factors are weighed. Like most of my legal brethren, I had to give up quite a bit to pursue my interest in the law. As little as a year ago I was in possession of a complete flock of principles, values and ethical guidelines. However, in reliance upon the possibility of legal practice, I disposed of every one of these troublesome traits. I don't have as much as a simple, viable conviction left. Sure, I could have sold these characteristics. And I could have cleaned up too. Do you have any idea what kind of price a single, barely used scruple can fetch on the open market? But, like any dedicated professional, I elected merely to surrender my moral fiber without fee. Don't you think I deserve a chance to recoup some of my financial losses?" The bar examiners did not.

In recent months, public and governmental action designed to stem the tide of Neuro-Jurism has begun slowly gaining momentum. As scientists more clearly distinguish the disease from other disorders, the need for such specialized attention has become increasingly clear. Significantly, the United States Department of Health, Education and Welfare has publicly evinced an intention to earmark over one million dollars of its upcoming budget for N.J. research. While this is hardly a Herculean figure, it does represent a long overdue change in the Department's approach to the disease. Of equal import, the nation's public broadcasting networks have agreed to televise next month's twelve hour N.J. telethon which is expected to raise at least an additional million dollars. Tentatively slated to co-host the program are singer/comedian Dean Martin and United States Supreme Court Justice Lewis F. Powell. (The network apparently hopes to snare a number of unwary viewers by advertising this

team as "Martin and Lewis.") Additionally, the three commercial networks have agreed to run frequent public service messages publicizing the seven officially designated warning signs of Neuro-Jurism. According to the A.M.A., those warning signs are:

- (1) Excessive use of compound words (such as; thereto, wherein, thereafter, hereinbefore, and overmyshoulder.)
- (2) A sudden affinity for three-piece suits.
- (3) Letters or postcards which take more than twelve hours to compose.
- (4) Immediate, compelling interest in tennis, golf or raquetball.
- (5) Sudden disappearances into the night. (Victims often do so while carrying a kerosene lantern and explaining that they are "looking for a reasonable man.")
- (6) Constant, compulsive hand washing. (Usually accompanied by repetitive murmuring of the hypnotic chant, "I must, equity demands it.")
- (7) Hopeless reliance upon analogy, allegory and syllogisms.

The A.M.A. hopes that national awareness of these symptoms, coupled with a better universal understanding of the causes and available treatments of the disease will help to remove the shroud of ignorance and fear which surrounds Neuro-Jurism. Perhaps the most significant result of this approach will be to impress upon the public the paramount importance of early N.J. detection and treatment. For, according to N.J. specialist Isabella Green, "when the disease is caught in its earliest stages we stand a fighting chance of salvaging a productive human life. If, however, the potential impact of the disease is ignored for too long then we, as a society, must take the responsibility for condemning thousands of our citizens annually to an eternal purgatory of jurisprudential torment."

