Addiction Science in the Courtroom: How Have Courts Responded?

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Existing Legal Doctrine for Addiction: Guilt Phase

- In all states, voluntary intoxication by alcohol or drugs is never a complete defense to criminal responsibility
- In some states (not AZ), diminished capacity due to voluntary intoxication may preclude specific intent → reduced crime

Existing Legal Doctrine for Addiction: Insanity Defense

- Insanity may or may not be a defense if caused in whole or part by voluntary intoxication
 - e.g., California statute no insanity defense when caused solely by voluntary intoxication
 - e.g., federal law no insanity defense when voluntary intoxication contributed. *U.S. v. Knott* (9th Cir. 1990)
 - e.g., Massachusetts insanity defense applies when substance abuse activates a latent disease or defect Commonwealth v. Herd (Mass. 1992)
 - e.g., "settled" or "fixed" insanity defense recognized in many states allows insanity defense based on longterm substance abuse leading to organic brain damage

Existing Legal Doctrine for Addiction: Mitigation Factor

• Statutory:

– A.R.S. §13-703(G)(1) provides that it shall be a mitigating circumstance where "[t]he defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired, but not so impaired as to constitute a defense to prosecution."

Non-statutory:

- If the defendant shows "some impairment at the time of the offense," he is entitled to an instruction on "substantial impairment" as a non-statutory mitigating circumstance, irrespective of whether he will or will not receive an instruction on impairment under (G)(1). State v. Carreon, 107 P.3d 900 (Ariz. 2005)

Addiction: Two-Edged Sword

- "a jury could mitigate his sentence based on the presumed diminished capacity of persons under the influence of illegal narcotics. The jury could also conclude that his addictions will never cease and would cause him to present an ongoing danger to society."
 - Smith v. Quarterman, 515 F.3d 392, 405 (5th Cir. 2008)

Potential Uses of Genetics in Addiction Cases

- Defendant was so genetically predisposed to addiction that substance abuse was not voluntary
- Defendant more genetically vulnerable to significant impairment from substance abuse
- Defendant genetically more (or less) prone to specific addiction treatments

Potential Uses of Neuroimaging in Addiction Cases

- Show "significant impairment" (mitigating factor) from defendant's substance abuse
- Show mental defect resulting in insanity or "settled insanity" caused in whole or in part by substance abuse
- Show mental defect resulting from substance abuse that precludes requisite "specific intent"
- Monitor parolee's compliance with mandatory treatment program

Neuorimaging and Addiction: Cases

- Defendant attempted to use PET scan evidence to demonstrate brain abnormalities induced by chronic PCP use that precluded him from forming requisite intent
- Court rejected:
 - Use of PET scans to diagnose chronic PCP abuse not generally accepted by the scientific community
 - No evidence introduced linking PET scan abnormalities to inability to form specific intent
- Jackson v. Calderon, 211 F.3d 1148 (9th Cir. 1998)

Brain Scanning for Addiction: Double-Edged Sword

- Convicted murderer of 9-year old girl who was sentenced to death filed habeas petition alleging ineffective trial counsel for failing to use brain scans to show organic brain damage from chronic drug use
- Federal court denies petition "mental health evidence is a 'double-edged word,' particularly when counsel focuses his mitigation argument on the defendant's character or amenability to rehabilitation."
- Bible v. Schriro, 497 F.Supp.2d 991 (D. Ariz. 2007)

Duty to Investigate Brain Scans in Addicted Defendant

- Morgan sentenced to death for murder; no neurological evidence submitted in mitigation phase despite history of encephalitis and heavy drug and alcohol use
- Post-conviction neurological testing demonstrated severe organic brain damage
- Illinois Supreme Court held that it was ineffective assistance of counsel not to investigate and present brain damage evidence in mitigation
 - "We find that [evidence] concerning defendant's severe organic brain damage explains defendant's violent conduct as related in the State's case in aggravation..."
- People v. Morgan, 719 N.E.2d 681 (III. 1999)

Opportunity to Show Brain Damage from Substance Abuse

- "[W]here defendant asserted by his proffer of evidence that his drug addiction had caused physiological damage to his brain and that such damage caused him to lack substantial capacity to conform his conduct to requirements of the law, he should have been allowed, under then existing test, to introduce evidence of any physical brain damage and consequent mental disease or defect, insofar as proffer of evidence tended to suggest such damage.
- U.S. v. Lyons, 731 F.2d 243 (5th Cir.1984)

Genetic Predisposition to Addiction

- Although Petitioner's genetic predisposition to alcoholism may be sympathetic, it is not much more so than the fact that his family encouraged him to abuse substances at a young age, a fact that was considered at sentencing.... Therefore, there is little additional significance to Petitioner's familial history of substance abuse (other than its contribution to his dysfunctional childhood, which is considered as part of the childhood abuse analysis)"
 - Detrich v. Schriro, 2007 WL 4024551 (D. Ariz., Nov. 15, 2007), *15.

Greater Weight to Mitigating Factor When Supported by Genetics?

- "Petitioner has strengthened his argument that his alcohol and drug dependence, which exacerbates his impairments, was largely out of his control and due to numerous biological and environmental influences. This makes the (G)(1) factor somewhat more sympathetic than voluntary intoxication and may increase the weight of the factor."
 - Detrich v. Schriro, 2007 WL 4024551 (D. Ariz., Nov. 15, 2007), *20

Judicial Skepticism to Genetics of Addiction

- "Next, we note that defendant's claim of "inherited" alcoholism is highly questionable in terms of credibility and, in our opinion, did little to help defendant at sentencing. Apparently, defendant believed he would be less blameworthy in the eyes of the jurors for his failure to seek help with his drinking problems, and his failure to earnestly try to overcome them, if he attributed the problems to genetics and family models. We believe defendant was mistaken in this respect. Moreover, the case defendant made for "inheriting" alcoholism is not convincing.... We believe the effort to blame defendant's drinking problems upon an alleged genetic or family predisposition was little more than a thinly veiled effort to divert responsibility from defendant for his failure to address his problems and take responsibility for them."
- People v. Mertz, 842 N.E.2d 618 (III ,2005)

Weight Given To Genetic Predisposition to Addiction?

- In murder trial of defendant with substance abuse problem, trial court found as a nonstatutory mitigating factor that his substance abuse "may have been caused by genetic factors"
- However, this and other mitigating factors outweighed by aggravating circumstances
- State v. Jones, 917 P.2d 200 (Ariz. 1996)

Evidence of Genetic Propensity

 "Petitioner argues that he has a genetic propensity for substance addiction and has a long history of addiction to alcohol and drugs. Counsel did not specifically identify a genetic propensity for addiction at the time of sentencing; however, the PSR and attached psychological report noted that Petitioner's mother had an addiction to prescription drugs." Detrich v. Schriro, 2007 WL 4024551 (D. Ariz., Nov. 15, 2007), *14

Evidence of Genetic Predisposition

- Defendant argued that he has genetically-based addiction to alcohol, and his involuntary intoxication caused him to commit first-degree sexual assault
- Court rejects defense "Boushack had no evidence that his intoxication was genetically based or involuntary except for his own suppositions"
 - U.S. v. Boushack, 1995 WL 116028 (Wisc Ct. App.)

Duty to Investigate Genetic Predisposition to Addiction

- Defendant convicted of murder and sentenced to death; filed writ of habeas corpus arguing trial counsel failed to adequately investigate and present mitigation evidence
 - Part of the mitigation evidence not investigated was expert's finding of a genetic predisposition to addiction based on family tree
 - "the only argument advanced by the State to convince the jury that McPherson deserved a death sentence was that he ... had freely chosen a life of addiction...."
- Georgia Supreme Court upholds habeas petition; inadequate investigation of mitigating factors; vacates death sentence
- Hall v. McPherson, 663 S.E.2d 659 (GA 2008)

Judicial Acceptance of Genetic Defense

- Only 3 cases in which courts have accepted genetic defense
- Each case involved attorney disbarment or discipline cases where attorney asserted genetic predisposition to alcohol or substance addiction



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